

Final Report

**Jury Innovations Committee
Judicial Management Council
Supreme Court of Florida**

May 2001

Chairman's Remarks

It has been my privilege to serve as Chair of Florida's Jury *Innovations* Committee these last eighteen months. Florida, now the fourth most populous state in the nation, has changed greatly over the last twenty years. Our population has grown and become more diverse. Citizen access to our courts continues to increase. As our society changes, so does the law. However, the way we, as a court system, treat jurors remains largely unchanged. In many jurisdictions throughout Florida, jurors are viewed as mere commodities. As a court system, we seem to have lost sight of the notion that a juror's time is valuable, or that it is less valuable than others in the system. This is unfortunate and counterproductive to a healthy court system.

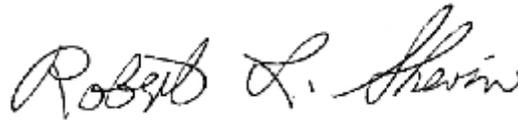
As a nation, we are in the midst of a jury reform revolution. In many states, the traditional adversarial courtroom model which views jurors as passive triers of fact is being challenged. The new learning model treats jurors *not* "as children," but as intelligent, informed adults who possess the ability to multi-task and interactively process information. This model recognizes that jurors are not, and should not be, bystanders during a trial but rather full partners in the proceedings. Jurors should always be treated with respect and honor since their role is just as important as that of the judge, the lawyer, and court staff.

The Committee has conducted a wholesale review of Florida's jury system applying the concepts of the new learning model. We start with the challenge *not* to adhere to the status quo, but instead to advocate reform and innovations. Every aspect of a juror's experience has been reviewed from management and administration, to "in-court" use, to how jurors are treated and compensated. As an appellate judge, it has been my experience that jury selection is the most significant, if not dispositive stage, of every jury trial. That is why I believe that our systemic review encompassing every aspect of jury service is warranted. Further, the Committee has applied a reasonableness test to each recommendation. Specifically, does the recommendation enhance the juror's experience, does it improve the process, and are its potential impacts on the system acceptable. I believe that you will find our recommendations to be fundamentally sound and well-reasoned.

The Committee relied heavily on materials presented at the 1998 Phoenix Jury Reform Conference and the 2001 New York Jury Summit. I would also like to recognize and thank Mr. G. Thomas Munsterman, Director, Center for Jury Studies, of the National Center for State Courts and Consultant to the Committee. Tom's support, guidance, and counsel were invaluable to the work of the Committee. The Committee is also eternally grateful to our hardworking staff from the State Courts Administrator's Office. Both Richard Cox and Gregory Youchock have been very dedicated and strongly committed to this massive project.

I commend the Committee members not only for their diligence and hard work, but for having the vision and determination to recognize that there is much we can do as a court system to improve the jury experience for all of Florida's citizens. I would also like to thank the Judicial Management Council and the Supreme Court of Florida for their unwavering support of our efforts. Their leadership and willingness to permit a serious review and make important changes to the sacred institution of jury service demonstrates *real courage*. Lastly, to the judges, lawyers, legislators, and citizens of Florida, I ask that you take the time to review these recommendations. I believe that you will find them worthy of adoption.

Respectfully,

A handwritten signature in black ink that reads "Robert L. Shevin". The signature is written in a cursive, flowing style.

Judge Robert Shevin, Chair
Jury Innovations Committee

Executive Summary

The Jury Innovations Committee began its work on November 1, 1999, by attending a multi-state video conference hosted by the Center for Jury Studies of the National Center for State Courts. The Committee reviewed its charge and began the journey of jury reform. The Committee was presented with available jury reform literature, including books, academic journals, monographs, periodicals, and state reports. Every aspect of jury service and reform was covered by the literature.

Because of the volume of work, the next step for the Committee was to form several subcommittees to create an equitable division of labor among the members. Three subcommittees were formed by subject matter: Management and Administration, In-Court Procedures (Voir Dire-Verdict), and Treatment and Compensation. Staff reviewed the literature and identified the major issues for each subcommittee. Initially, there were approximately 60 issues under consideration by the three subcommittees.

Management and Administration Subcommittee - Judge Thomas Bateman, Chair

The Management and Administration Subcommittee paid particular attention to how jurors are managed by the court, the efficacy of the current source list for summoning jurors, statutory exemptions, and citizen education campaigns. The subcommittee also focused on the process of how courts enforce their summons and excuse or postpone prospective jurors from jury service. Considerable attention was paid to identifying problems associated with the current source list (driver license list). Following the lead of 27 other states, the subcommittee also recommended the abolition of most statutory exemptions from jury service.

In-Court Procedures (Voir Dire-Verdict) Subcommittee - Judge Fredricka Smith, Chair

The In-Court Procedures Subcommittee had the largest number of potential issues to consider. Using G. Thomas Munsterman's book *Jury Trial Innovations* as its guide, the subcommittee conducted a comprehensive review of in-court reforms. Because of the volume, the subcommittee divided the issues into four subgroups: jury selection; jury participation; evidentiary presentation; and judge-jury interactions. The subcommittee also conducted a joint video-conference with the Maricopa County Superior Court in Phoenix, Arizona to ascertain how its reforms are working. A panel of judges, lawyers, administrators, and former jurors in Arizona discussed many of their in-court reforms thereby helping provide context to the reforms under consideration by the subcommittee.

The recommendations advanced by the In-Court Procedures Subcommittee mirror each step of the in-court process. The subcommittee reviewed the use of standardized juror questionnaires, jury size, and expedited trials. The subcommittee also discussed professional jurors, anonymous juries, and the most appropriate way to use alternate jurors. A number of the subcommittee recommendations were based upon the premise that jurors should no longer be treated as passive players in a trial, but rather as fully engaged in the proceedings. For example, the subcommittee advanced recommendations in the area of questions by jurors, permitting jurors to discuss evidence prior to deliberations in civil trials, and note-taking.

The subcommittee believed that court proceedings should be user-friendly for jurors, and thus made recommendations regarding juror notebooks, computer-aided presentations, simple and clear instructions, as well as written, preliminary, and interim jury instructions. The subcommittee also focused its efforts on the process of jury deliberations, making recommendations concerning procedures for deliberations, juror comfort, judicial answers to deliberating juror questions, impasse, and less-than-unanimous verdicts.

Juror Treatment and Compensation Subcommittee - Professor Larry Morehouse, Chair

As the name implies, the Juror Treatment and Compensation Subcommittee concentrated most of its effort on how jurors are treated by Florida's court system. Perhaps their most significant recommendation was the creation of a Juror's Bill of Rights. Other recommendations relate to the interaction between jurors, lawyers, judges, and researchers once a verdict is issued. Juror pay, private remuneration, and requiring employers to pay their employees while serving on jury duty were all discussed by the subcommittee. Lastly, the issues of juror stress and juror privacy were also reviewed. The subcommittee also developed a hard copy and Internet juror questionnaire. Approximately 5,550 copies were issued statewide with 1,300 responses received. (See attached Appendix).

Implementation Strategy

The Committee suggests that its recommendations, to the greatest extent possible, be implemented expeditiously by Supreme Court rule, bypassing the normal rule process currently employed. The Committee believes that input should be obtained from The Florida Bar as well as from all relevant committees. While the Committee is aware that a number of its recommendations (e.g., statutory exemptions) will involve legislative action, it recommends that the Court *strongly consider* utilizing its rule making authority to the greatest extent consistent with constitutional restraints. This was how Arizona and many other states achieved early success in implementing their jury reforms.

Acknowledgments

The Committee would especially like to thank G. Thomas Munsterman, Director, Center for Jury Studies for his enthusiastic support of their work. As Consultant to the Committee, Mr. Munsterman was an invaluable resource on jury reform efforts nationally, as well as providing advice, counsel, and direction. The Committee would also like to recognize Judge B. Michael Dann, former Chair of Arizona's Jury Reform Commission and Judge Gregory E. Mize, Co-Chair of the Washington D.C. Superior Court Jury Commission for their testimony and overall assistance. We also recognize the tremendously helpful work done by Chief Judge Judith S. Kaye, State of New York, for hosting and arranging the very useful 2001 New York Jury Summit. The Committee also acknowledges the assistance of the Maricopa County Superior Court in Phoenix, Arizona for their assistance in hosting a joint video-conference between their court and the Committee.

Copies

Copies of this report are available from the Court Services Division, Office of the State Courts Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399 or by calling (850) 922-5094. Copies may also be obtained from the Supreme Court website at www.flcourts.org sublink Judicial Administration, sublink Florida Court Committees, sublink Judicial Management Council, sublink Jury Innovations Committee.

Alternate Format

Upon request by a person with a disability, this document will be made available in audiotape, braille, large print, or electronic file on computer disk. To order this document in one of these alternate formats, please contact: ADA Coordinator, Office of the State Courts Administrator, 500 south Duval Street, Tallahassee, Florida 32399-1900; telephone (850) 922-4370.

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Committee Charge

The purpose of the Jury Innovations Committee is to review the existing Florida jury system and evaluate the need for improvements to the system. With this charge, the committee shall perform the following activities:

Phase I: By March 31, 2000, the committee shall:

1. Identify and preliminarily review:
 - the current use of juries in Florida courts
 - applicable case law
 - questions and issues currently facing jury managers
 - revisions mandated by the recent “tort reform legislation”
 - accessibility issues (see report by Commission on Fairness)
 - proposals for jury improvements and innovations in other states
2. Select the top two to three issues in each of the following areas, for further study and consideration in Phase II:
 - the juror experience
 - the jury decision-making process
 - jury management/administration

Phase II: By April 30, 2001, the committee shall:

1. Comprehensively study and analyze the legal, policy, funding, and other implications of implementing the proposed changes to the jury system.
2. Prepare and submit a final report to the Judicial Management Council.

Committee Membership

Robert Shevin	Chair, District Judge, Third District Court of Appeal (Miami)
Harry Lee Anstead	Justice Liaison (Tallahassee)
Tom Bateman	Circuit Judge, Second Judicial Circuit (Tallahassee)
Barry M. Cohen	County Judge, Palm Beach County (West Palm Beach)
Ted Coleman	Chief Judge, Ninth Judicial Circuit (Orlando)
Jennifer Dyer Wells	Trial Court Administrator, Fourteenth Circuit (Panama City)
William Fuente	Circuit Judge, Thirteenth Judicial Circuit (Tampa)
Nelly Khouzam	Circuit Judge, Sixth Judicial Circuit (Clearwater)
Andy Madsen	Jury Coordinator, Eleventh Judicial Circuit (Miami)
Larry Morehouse	Professor of Criminal Justice, University of South Florida (Tampa)
Karen Nicolai	Clerk of Court, Hernando County (Brooksville)
Richard Parker	Public Defender, Eighth Judicial Circuit (Gainesville)
Harry Shorstein	State Attorney, Fourth Judicial Circuit (Jacksonville)
Fredricka Smith	Circuit Judge, Eleventh Judicial Circuit (Miami)
Sylvia Walbolt	Attorney (St. Petersburg)
Charles Williams	Circuit Judge, Twelfth Judicial Circuit (Bradenton)
John Grant	State Senator (Tampa)
Benedict P. Kuehne	Attorney (Miami and Ft. Lauderdale)
David Bianchi	Attorney (Miami)
Karen Walby	Former Juror (Tallahassee)
Rupert Henry	Former Juror (Miami)
Rosa Freeland	Former Juror (Miami)
Lea Black	Former Juror- High Profile Case (Miami)

Staff:

Gregory Youchock, Office of the State Courts Administrator
Richard Cox, Office of the State Courts Administrator

Consultant:

G. Thomas Munsterman, Director, Center for Jury Studies,
National Center for State Courts

Summary of Recommendations

Management and Administration Recommendations

1 **Standard Panel Sizes.** There is a direct relationship between standard panel sizes and efficient juror use. It is likely that more jurors will be able to experience the “juror process” up to and including voir dire if standard panel sizes are maintained. This practice is recommended in the jury literature. Moreover, the standard panel sizes have, for the most part, functioned satisfactorily for the past ten years and should be strictly enforced rather than modified at this time. The Chief Justice should continue to impress upon the chief judge of each circuit the need for strict compliance with the standard panel sizes.

There are however minor changes recommended in relation to county court. While a panel size of 14 is sufficient for most county criminal cases, panel sizes should be raised to 16 for domestic violence and driving under the influence cases, which ordinarily would see increases in both cause and peremptory challenges. Finally, the Committee notes that if the number of peremptory challenges is reduced, it may be appropriate to reduce the standard panel sizes.

2 **Summons Enforcement, Non-Compliant Jurors, and Postponements.** Courts should develop and adhere to reasonable policies for summons enforcement, non-compliant jurors, and postponements of jury duty designed to maximize public participation in jury service. Emphasis should be placed on utilizing a system of postponements designed to maximize the participation of persons who otherwise would ignore a jury summons because of an inconvenient time.

3 **Juror Source List.** In light of the recent statutory shift of the juror source list from voter registration to driver licenses, no change in the source list is recommended. However, more resources should be expended to correct errors in the list relating to felony status, residence, and underage (18) eligibility. In relation to residence, the Committee recommends that the Department of Highway Safety and Motor Vehicles include county of residence on its driver license application form. Particular attention should be given to removing monetary impediments for persons updating their addresses on driver licenses.

The Committee recommends that section 322.17(2), Florida Statutes, be amended to delete the ten dollar fee a licensee must pay for a replacement license with a change of name or address. It is the view of the Committee that this fee operates to discourage some persons from keeping the information on their driver license current.

- 4** **Statutory Exemptions.** In the interest of justice, citizen participation in jury service should be encouraged by all available means. The list of statutory exemptions from jury duty should be greatly reduced to include only felons who have not completed their entire sentence, including probation, parole, and community control. Any such reduction in the current categories of exemptions should be accompanied by a broader hardship provision which should be designed to identify actual hardship through the use of objective criteria.

Hardship should be defined either by statute, court rule, or administrative order adopted pursuant to statutory authority. Hardship exemptions may be granted either by a judge or by a duly authorized court official under the direction of the court. A simplification of the current morass of exemptions should result in an increase in the participation of qualified persons in jury duty, thereby maximizing the number of persons who participate in the civic duty of jury service and reducing the frequency of service for jurors in general.

- 5** **Juror Orientation.** A standard juror orientation guide outlining best practices should be developed and made available to all courts in the state. While adherence to the guide would not be required, courts should be strongly encouraged (perhaps through an administrative order of the Chief Justice) to utilize the guide or take a substantially similar approach. This approach could be aided by the development of a day long educational class on juror orientation as part of the judicial education curriculum.

- 6** **Citizen Education Campaigns.** Courts should consider developing citizen education campaigns. Since Florida's counties/circuits are so varied, citizen education campaigns should be tailored to meet the local needs of a community. There are many techniques available to courts to achieve this goal, including press conferences, juror appreciation day/week, mass media efforts such as newspapers and television, judicial appearances at school civic classes, and educational videos. The endorsement and support of the court system is key to the success of any citizen education plan. A model video should be developed

for dissemination to jury administrators.

In-Court Procedures (Voir Dire -Verdict) Recommendations

- 7** **Standardized Juror Questionnaires.** Pre-voir dire questionnaires are desirable and beneficial. Model questionnaires should be developed for both civil and criminal cases, enabling lawyers to have a preview of jurors' backgrounds. In-court voir dire can then be limited to case-specific inquiries (subject to reasonable time limitations imposed by the court) and any follow-up questions necessary to clarify written answers.
- 8** **Jury Size.** There should be no reduction in the size of either criminal or civil juries.
- 9** **Expedited Trials.** When used properly, expedited trials can be a useful tool to save jurors' time. A newly enacted but underutilized provision, section 45.075, Florida Statutes, establishes the procedures for expedited civil trials, that is, trials which must be limited to one day, but may involve a jury. In order to encourage the use of expedited jury trials, attorneys should be required by court rule to notify their clients in writing of the applicability of the expedited trial procedure. In addition, the attorney should be required to file a statement with the court that this notice has been provided to the client.
- 10** **Professional Jurors.** The use of professional jurors is not recommended. However, court-assisted arbitration panels (using experienced professionals) may be beneficial in relation to complex civil cases. Furthermore, courts should strictly curtail exemptions and excusals from jury service for professionals and business persons, thereby increasing the pool of jurors having expert knowledge and skills that can be useful in resolving complex issues. However, jurors with expert knowledge must be instructed not to let professional experience control their perception of the evidence.
- 11** **Anonymous Juries.** Trial judges should be given discretion to empanel anonymous juries only when there is a strong reason to believe the jurors need protection. Judges should be required to consider a number of factors in

determining if an anonymous jury is necessary, including the following: (1) type of crime or controversy involved; (2) likelihood of harm to jurors; (3) litigants' past attempts to interfere with the judicial process; (4) severity of potential sentence in a criminal case; and (5) nature of publicity. Consideration should be given to amending the Florida Rules of Judicial Administration to codify this procedure.

- 12** **Alternate Jurors.** The current use of alternate jurors should be surveyed and studied. In addition, a pilot project should be conducted in one or more counties to evaluate a system of allowing alternate jurors to deliberate. At the present time, judges should be encouraged to not reveal to an alternate juror that person's status so as not to reduce the alternate's incentive to closely follow the trial. Under any circumstances, the number of alternates should be limited to those likely to be needed.
- 13** **Pre-Voir Dire Judicial Statements.** To encourage citizen participation in the jury system, judges should be permitted and encouraged to give brief pre-voir dire statements outlining the basic nature of the case. This will increase juror interest in serving on the jury and reduce the number of jurors requesting dismissal from service.
- 14** **Pre-Voir Dire Opening Statements By Attorneys.** Judges should be encouraged to allow attorneys to make brief mini-opening statements to jurors *before* voir dire begins.
- 15** **Peremptory Challenges.** A comprehensive study of the use of peremptory challenges should be conducted. Issues to be studied should include the number of peremptory challenges, the use of such challenges in a discriminatory manner, the effect of peremptory challenges on jurors' perception of the court system, and whether peremptory challenges should be reduced in certain cases, such as matters involving multiple parties or class actions. This study could also consider whether peremptory challenges should be eliminated.
- 16** **Questions By Jurors.** Jurors in both civil and criminal trials should be permitted to submit to the judge written questions to be asked of witnesses by the judge. The judge has the discretion to determine which jury

questions are to be asked of witnesses. The Supreme Court should incorporate this right into the rules of civil and criminal procedure.

- 17** **Discussion of Evidence Prior to Deliberations.** Jurors in civil trials only should be instructed that they are permitted to discuss the evidence in the jury room during recesses from trial, when all jurors are present, as long as they reserve judgment about the outcome of the case until deliberations commence. The Supreme Court should incorporate this right in the rules of civil procedure and/or the standard jury instructions for civil cases. Extension of this innovation to the criminal area should await further study in light of the significant constitutional rights which could be affected.
- 18** **Note-Taking By Jurors.** Jurors in both civil and criminal trials should be permitted to take notes and be advised they may do so. This right should be incorporated into the rules of civil and criminal procedure. Such rules would clarify that juror notes may be taken with them from the courtroom to the jury room. These notes may be shared with other jurors, but must be destroyed after the verdict is delivered. Appropriate jury instructions must be given.
- 19** **Videotapes for Absent Jurors.** A procedure of videotaping court proceedings for subsequent review by jurors should not be adopted.
- 20** **Interim Commentary.** Judges should be given discretion to permit brief interim commentary by counsel, under appropriate circumstances, in civil and criminal trials of at least three days duration.
- 21** **Deposition Summaries.** Deposition summaries may be used in civil trials. However, their use in criminal proceedings should not be permitted.
- 22** **Expanding the Use of Depositions in Civil Cases (100 Mile Requirement).** The civil rule requirement that a witness must be a greater distance than 100 miles from the place of a trial as a prerequisite for the use of that person's deposition at trial should be repealed.
- 23** **Juror Notebooks.** Juror notebooks, which can serve a useful function (especially in civil cases) in lengthy and complex trials, should be specifically

authorized by court rule.

- 24** **Computer-Aided Presentations.** Trial judges should encourage the use of computer-aided presentations during trial, where appropriate.
- 25** **Simple and Clear Instructions.** All instructions should be as simple and clear as possible.
- 26** **Written Jury Instructions.** Copies of the written jury instructions should be given to jurors for their use during deliberations.
- 27** **Preliminary Jury Instructions.** Case-specific preliminary jury instructions should be given at the outset of trial. In complex or technical cases, definitions of terms and other information to help orient the jury should be included.
- 28** **Interim Instructions.** Interim instructions, as deemed necessary, should be utilized in civil trials by the judge to explain matters that arise in the course of the trial, such as evidentiary issues.
- 29** **Procedures for Jury Deliberations.** In both civil and criminal cases, judges should instruct jurors on procedures for conducting their deliberations, including an instruction suggesting to the jury how it should use the instructions during deliberations. Jurors should be given instructions on how to organize their deliberations and what assistance, if any, they can ask of the court. Jurors need to be instructed that no new evidence can be presented to them once their deliberations have begun. The Committee suggests that the trial judge refer to the American Judicature Society's publication entitled *Behind Closed Doors, A Guide to Jury Deliberations*.
- 30** **Juror Comfort During Deliberations.** Reasonable amenities, such as recesses, snacks, and refreshments, should be provided to deliberating jurors. The State of Florida should reimburse the county for the costs thereof.
- 31** **Final Instructions Before Closing Arguments.** Judges should be encouraged to deliver their final instructions to the jury *before* closing

arguments.

- 32** **Judicial Answers to Deliberating Jurors’ Questions.** Trial judges should be as responsive as possible and fully answer deliberating jurors’ questions, consistent with applicable case law. The trial judge, when possible, should not ask jurors to rely on their “collective memory” when the judge is faced with questions from a deliberating jury, but rather respond more directly to their inquiries.
- 33** **Read-Back of Testimony.** The Supreme Court should develop specific criteria for denying a read-back request. Such criteria could include relevant factors, such as whether the requested testimony is too lengthy or too vague. While the trial judge should have discretion in granting or denying the read-back of testimony, such a read-back should *not* be denied unless the court finds that one of the criteria, such as excessive length or vagueness, is met.
- 34** **Juror Impasse.** Trial judges in criminal and civil cases should be allowed to assist deliberating juries in reaching a verdict where an *Allen* charge has been given and the jury continues to report that they are deadlocked. Jurors should know exactly what can occur if they cannot reach a verdict, that is, what a mistrial actually means.
- 35** **Less Than Unanimous Verdicts.** In criminal cases, no consideration should be given to less than unanimous verdicts, unless upon stipulation of the defendant, irrespective of whether initiated by the judge, an attorney, or the defendant. However, there should be some consideration to generally allowing the attorneys and parties to stipulate to less-than- unanimous verdicts in civil cases under appropriate circumstances.

Juror Treatment and Compensation Recommendations

- 36** **Juror Bill of Rights.** Florida should adopt a juror bill of rights. The Supreme Court of Florida should adopt a rule to such effect and/or have the Chief Justice issue an administrative order.

- 37** **Juror Parking.** The State of Florida should pay for juror parking in all counties.
- 38** **Juror Time Management.** American Bar Association (ABA) Standard 13: *Juror Use* should be adopted as a rule of judicial administration.
- 39** **Americans With Disabilities Act (ADA).** The jury service recommendations of the Southeast Florida Center on Aging and the Supreme Court Commission on Fairness regarding policy and programmatic changes relating to elder citizens and citizens with disabilities should be adopted by the Supreme Court.
- 40** **Place Cards and/or Seating Charts.** Place cards and seating charts are a valuable aid to jurors in cases with multiple parties, attorneys, or witnesses, at only a nominal cost to the parties or the court. However, their use should remain within the discretion of the trial court judge and should not be used in criminal cases in which the identity of the defendant is at issue.
- 41** **Post-Verdict Discussions.** Judges should advise jurors of their rights regarding post-verdict discussions at the conclusion of a trial. This issue should become institutionalized through the judicial educational component of both the New Judges College and the Advanced College for Judicial Education. Experienced trial judges, acting as instructors at these respective colleges, can provide valuable insight and information to fellow judges regarding post-verdict discussions.
- 42** **Informal Communications Between the Judge and Jury.** While it is permissible for judges to meet with jurors after a verdict is reached, the decision to do so should be left up to the discretion of the judge.
- 43** **Post-Verdict Interviews By Attorneys and Researchers.** While there is possible value in permitting attorneys and researchers to interview jurors in a post-verdict setting, the decision to permit such contact and determine the scope thereof should remain within the discretion of individual trial judges, who shall have the exclusive authority to authorize such meetings. The civil and criminal rules of procedure and standard juror instructions should be clarified

and made uniform in relation to this issue. Nothing in this recommendation shall be interpreted to interfere with the right of jurors to be left alone.

- 44** **Juror Pay.** Juror per diem rates should be reviewed every five years by the Legislature and any increase should be tied to the rate of inflation as identified by the Consumer Price Index or some comparable index.
- 45** **Employer Ordinance/Law.** There should *not* be a statewide law requiring employers to pay their employees while serving on jury duty. However, an employer notification letter (signed by a judicial officer) should be made available upon request for any jurors to submit to their employers as proof of jury service. The Florida Legislature has already provided sufficient employment protection for jurors in section 40.271, Florida Statutes.
- 46** **Private Remuneration for Jury Duty.** Private remuneration for jury duty should occur infrequently, if at all. However, if it occurs, it is recommended that all parties contribute an equal share of the remuneration provided, to ensure the integrity of the judicial system and to avoid any appearance of impropriety.
- 47** **Juror Stress/Debriefing Sessions.** The use of debriefing sessions to alleviate juror stress should be left to the discretion of the judge. At present, there is no need to codify or institutionalize the process.
- 48** **Juror Privacy.** Protecting a juror's privacy must be balanced against the rights of plaintiffs and defendants to a fair trial. Rule 2.051, Florida Rules of Judicial Administration, which balances the public's right to know with countervailing interests, implicitly allows public access to juror questionnaire information. Notwithstanding, the Supreme Court should adopt the American Bar Association (ABA) Standard for Juror Privacy as amended by the Committee.

In addition, judges should use individualized voir dire, either at the bench or in chambers, whenever any sensitive issue, such as past criminal history, is raised. While the use of such voir dire might be time consuming, a juror's privacy interest is of sufficient weight to justify the use of additional time. If legislation is necessary, it should be pursued.

Management and Administration Recommendations

Standard Panel Sizes

1

There is a direct relationship between standard panel sizes and efficient juror use. It is likely that more jurors will be able to experience the “juror process” up to and including voir dire if standard panel sizes are maintained. This practice is recommended in the jury literature. Moreover, the standard panel sizes have, for the most part, functioned satisfactorily for the past ten years and should be strictly enforced rather than modified at this time. The Chief Justice should continue to impress upon the chief judge of each circuit the need for strict compliance with the standard panel sizes.

There are however minor changes recommended in relation to county court. While a panel size of 14 is sufficient for most county criminal cases, panel sizes should be raised to 16 for domestic violence and driving under the influence cases, which ordinarily would see increases in both cause and peremptory challenges. Finally, the Committee notes that if the number of peremptory challenges is reduced, it may be appropriate to reduce the standard panel sizes.

Discussion:

Standard panel sizes were implemented by the Supreme Court in response to an Auditor General performance audit of the Florida State Courts System which indicated that significant numbers of excess prospective jurors were being summoned in relation to the actual number of trials. These standard panel sizes were recommended by a statewide committee appointed by the Supreme Court to study this issue. The committee was comprised primarily of circuit and county judges, trial court administrators, and clerks of court. The implementation of standard panel sizes, combined with a reduction in the term of service and a statutory change in the payment of jurors, have saved the state court system approximately \$18 million in unnecessary juror per diem costs and days over the last decade. See attached order.

Data submitted to the Office of the State Courts Administrator indicate that in some circuits there has been a gradual increase in the number of people summoned and reporting for jury duty. The data suggest that the standard panel sizes are being exceeded for various reasons, such as judicial preference

and problems associated with the recent change in the source list. Therefore the possible beneficial effects of standard panel sizes both in relation to juror utilization and monetary savings are not currently being fully realized.

The Committee does recommend one minor change in the number of jurors for county criminal cases, that is, from 14 to 16 in domestic violence and driving under the influence cases. The Committee notes that judges frequently call for additional jurors due to the number of challenges typically exercised in these cases, a practice specifically noted by the Supreme Court, at least in relation to driving under the influence (DUI) cases, in rule 6.183, Florida Traffic Court Rules, which specifically authorizes the court to grant additional peremptory challenges in DUI cases in the interest of justice.

IN RE: JURY MANAGEMENT PROGRAM

ADMINISTRATIVE ORDER

Pursuant to the authority vested in this Court by Article V of the Florida Constitution and in consideration of the State Courts System's responsibility for efficient administration of funds appropriated for juror per diem and expenses, a comprehensive jury management program has been instituted to reduce costs and to minimize inconvenience to citizens summoned for jury service.

Since 1990, the jury management program has greatly reduced juror costs to the taxpayers of Florida. There has also been a reduction in lost productivity and inconvenience to citizens because fewer people are now summoned for jury service. It is a goal of the State Courts System to sustain these savings and continue to improve jury management efficiency where possible. Despite the success of the jury management project, recently the average number of people brought in to start a trial has increased. To halt this trend, the trial courts must act immediately to reduce the number of jurors called for service and improve the efficiency with which jurors are managed once they report.

Chief judges of the circuit courts shall continue to have primary responsibility for the achievement of cost savings and other goals of the jury management program. However, achievement of these goals cannot be realized without the cooperation of all judges hearing jury trials, as well as personnel in the offices of the clerks of court and trial court administrators. The Office of the State Courts Administrator shall continue to coordinate the jury management program and provide technical assistance and training to the trial judges, trial court administrators, and clerks of court.

Each judicial circuit shall comply with the following cost reduction measures:

1. Reduction in the number of citizens called for jury service. The primary criterion will be the number of people brought in (PBI) to start a trial. Each circuit should modify existing plans and procedures to reach the goal of averaging 18.3 people brought in to start a trial.
2. For purposes of determining the maximum number of jurors to be summoned, and barring an exception made by the chief judge of each judicial circuit on a case-by-case basis, the panel sizes for any trial should be as follows:
 - a. Capital cases in which the death penalty is sought - no greater than 50 prospective jurors,
 - b. Other twelve-person juries and life felony trials - no greater than 30 prospective jurors,
 - c. Circuit criminal juries - no greater than 22 prospective jurors,
 - d. Circuit civil juries - no greater than 16 prospective jurors, and
 - e. County court juries - no greater than 14 prospective jurors, except for DUI and domestic violence cases which shall have panel sizes of 16.
3. The clerk of court, or the trial court administrator if so designated by the chief judge, shall continue to report the activity of all jury cases before all courts within that jurisdiction to the Supreme Court in the manner and format established by the Office of the State Courts Administrator and approved by the Chief Justice.

The standards set forth herein shall be implemented immediately.

DONE AND ORDERED at Tallahassee, Florida, this _____ day of _____,
2001.

Chief Justice Charles T. Wells

ATTEST:

Thomas D. Hall, Clerk
Florida Supreme Court

Summons Enforcement, Non-Compliant Jurors, and Postponements

2

Courts should develop and adhere to reasonable policies for summons enforcement, non-compliant jurors, and postponements of jury duty designed to maximize public participation in jury service. Emphasis should be placed on utilizing a system of postponements designed to maximize the participation of persons who otherwise would ignore a jury summons because of an inconvenient time.

Discussion:

Summons Enforcement. Many citizens do not respond to their initial jury summons, thereby becoming Failures To Appear (FTA). Courts have various methods available to assist them in enforcing a summons, including issuing a notice to appear or contempt citation and imposing a fine. A primary goal of any enforcement action is to retain public respect for the court and the rule of law. A secondary goal is to provide for sufficient jurors so that the cases on the court's docket may be tried in a timely manner. The literature indicates that indifferent enforcement damages the legitimacy of the jury process. Moreover, those who do not report for service often realize that there are no consequences for their behavior.

Non-compliant Jurors. Courts struggle constantly with how to address the issue of non-compliant jurors or FTAs. Since jury duty is imposed by the state, any reward to a prospective juror is tied to an understanding that performing one's civic duty is important. Recent research indicates that greater enforcement of the summons, along with public education, are two factors that increase the summoning yield and juror satisfaction. Follow-up letters from the court to the FTAs reminding them of their obligation can have a positive impact on both the summoning yield and attitude of the FTA. With the advent of electronic signatures and scanners, issuing follow-up letters from the court or a designated jury judge can produce significant benefits in terms of increases in the summoning yield. The Chief Judge of the circuits should issue an administrative order establishing the circuit's procedures (i.e., follow-up letters, orders to show cause, potential penalties, etc.) to address the problem of jurors who willfully fail to respond to a jury summons. Public education, particularly in the middle and high schools, about the intrinsic benefits of civic involvement and responsibility (including jury duty) are also encouraged as methods which may have a beneficial effect.

Postponements. One way to accommodate jurors and keep the summoning yield high is for courts to adhere to a liberal postponement or deferral policy. Many jurors are willing to serve but find the date on their summons to be inconvenient. Courts are encouraged to defer jurors to a date up to six months from their original summons date. This demonstrates to the jurors that the court is sensitive to their schedules yet needs for them to serve at a later time. This technique is practiced by many jury managers throughout Florida and is recommended by the Office of the State Courts Administrator (OSCA) in its *Jury Management Manual*. More importantly, it is specifically authorized by section 40.23(2), Florida Statutes.

Juror Source List

3 In light of the recent statutory shift of the juror source list from voter registration to driver licenses, no change in the source list is recommended. However, more resources should be expended to correct errors in the list relating to felony status, residence, and underage (18) eligibility. In relation to residence, the Committee recommends that the Department of Highway Safety and Motor Vehicles include county of residence on its driver license application form. Particular attention should be given to removing monetary impediments for persons updating their addresses on driver licenses.

The Committee recommends that section 322.17(2), Florida Statutes, be amended to delete the ten dollar fee a licensee must pay for a replacement license with a change of name or address. It is the view of the Committee that this fee operates to discourage some persons from keeping the information on their driver license current.

Discussion: The Committee acknowledges continuing problems with the driver license source lists relating to, among other things, felony status, residence, and underage jurors. The Committee notes that the source list is the statutory responsibility of the Department of Highway Safety and Motor Vehicles (DHSMV) and thus there is limited influence which could be exerted by the judicial system to bring the lists into closer compliance with the law. However, the Committee believes that DHSMV should correct existing deficiencies, and encourages the Legislature to provide sufficient resources to allow DHSMV to accomplish its statutory function.

Statutory Exemptions

4

In the interest of justice, citizen participation in jury service should be encouraged by all available means. The list of statutory exemptions from jury duty should be greatly reduced to include only felons who have not completed their entire sentence, including probation, parole, and community control. Any such reduction in the current categories of exemptions should be accompanied by a broader hardship provision which should be designed to identify actual hardship through the use of objective criteria.

Hardship should be defined either by statute, court rule, or administrative order adopted pursuant to statutory authority. Hardship exemptions may be granted either by a judge or by a duly authorized court official under the direction of the court. A simplification of the current morass of exemptions should result in an increase in the participation of qualified persons in jury duty, thereby maximizing the number of persons who participate in the civic duty of jury service and reducing the frequency of service for jurors in general.

Discussion:

The Committee used as a starting point for discussion American Bar Association (ABA) Jury Standard 6 (see Attachment A), which would basically eliminate all automatic excuses or exemptions, subject to a hardship exception and a requirement of a minimum ability of comprehension and a felony disqualification. According to the Bureau of Justice Statistics, there are currently 27 states that have eliminated all automatic exemptions for jury service. It should be noted that these states still excuse jurors for undue hardship or extreme inconvenience.

The present system of exemptions (see Attachment B) contains numerous categories of persons who the Committee believes should not be entitled to either an automatic exemption or automatic consideration for excusal merely based on membership in that category. The Committee believes that persons should not be excused unless they show in a particularized manner justification for the inability to serve.

At the 2001 New York Jury Summit, many supreme court justices, other judges, the present governor of New York, the present mayor of New York

City, CBS anchorman Dan Rather, and many lawyers and doctors identified themselves as being excited to have served as jurors.

Attachment A

ABA Jury Standard 6: Exemption, Excuse, and Deferral

- (a) All automatic excuses or exemptions from jury service should be eliminated **except for felons and persons under prosecution for a felony.**
- (b) Eligible persons who are summoned may be excused from jury service only if:
 - (i) their ability to receive and evaluate information is so impaired that they are unable to perform their duties as jurors and they are excused for this reason by a judge; or
 - (ii) they request to be excused because their service would be a continuing hardship to them or to members of the public, or they have been called for jury service during the two years preceding their summons, and they are excused by a judge or a duly authorized court official.
- (c) Deferrals of jury service for reasonably short periods of time may be permitted by a judge or duly authorized court official.
- (d) Requests for excuses and deferrals and their disposition should be written or otherwise made of record. Specific uniform guidelines for determining such requests should be adopted by the court.

[Emphasis Added]

Attachment B

Section 40.013, Florida Statutes

Disqualified

- (1) Felons (unless civil rights restored)
- (1) Persons under prosecution for a felony
- (2)(a) Governor
- (2)(a) Lieutenant Governor
- (2)(a) Cabinet Officer
- (2)(a) Judge
- (2)(a) Clerk of Court
- (3) Person interested in any issue to be tried (exception if party governmental entity)

Exempt

- (7) Service within preceding year

Excused at Option of Juror

- (2)(b) Law Enforcement Officers
- (4) Expectant Mother
- (4) Parent (not employed full-time) with custody of child under 6
- (5) Hearing Impaired
- (8) 70 years old
- (9) Care of mentally ill / retarded, senile, or other

Excused at Option of Judge

- (5) Practicing Attorney
- (5) Practicing Physician
- (5) Physically Infirm
- (5) Hearing Impaired (auditory discrimination essential)

Excused at Option of Judge/Clerk

- (6) Hardship

- (6) Extreme Inconvenience
- (6) Public Necessity

Juror Orientation

5

A standard juror orientation guide outlining best practices should be developed and made available to all courts in the state. While adherence to the guide would not be required, courts should be strongly encouraged (perhaps through an administrative order of the Chief Justice) to utilize the guide or take a substantially similar approach. This approach could be aided by the development of a day long educational class on juror orientation as part of the judicial education curriculum.

Discussion:

After considering the results of juror questionnaires and in light of a study of practices around the state, the Committee is of the opinion that the imposition of a standardized juror orientation format would not be wise. The Committee believes this is an area better left to the discretion of the individual counties, which may have unique situations in relation to the availability of a presenter (for example, judge or deputy clerk) and local jury practices.

The Committee is, however, of the opinion that a training curriculum should be developed at the New Judges College and Advanced College for Judicial Education for judges who provide juror orientation. In addition, curriculum should be developed for jury administrators, whether clerks of court or trial court administrators, to assist them in performing their role in relation to juror orientation.

Citizen Education Campaigns

- 6** Courts should consider developing citizen education campaigns. Since Florida's counties/circuits are so varied, citizen education campaigns should be tailored to meet the local needs of a community. There are many techniques available to courts to achieve this goal, including press conferences, juror appreciation day/week, mass media efforts such as newspapers and television, judicial appearances at school civic classes, and educational videos. The endorsement and support of the court system is key to the success of any citizen education plan. A model video should be developed for dissemination to jury administrators.

Discussion:

G. Thomas Munsterman in his book *Jury Trial Innovations* indicates that the advantages of a citizen campaign are that it provides an opportunity for the judicial branch to teach important values of citizenship, such as a trial by jury. In addition, it provides an effective vehicle for fostering effective court relations with the community and educates the judiciary about the extent of public knowledge and understanding of jury service. However, it should be noted that an effective jury education campaign takes considerable resources to plan and execute. Judicial leadership and support are a critical foundation to any success. Unfortunately, many judges are uncomfortable communicating with the media. In addition, evaluating the effect of a public education campaign can be very difficult.

In-Court Procedures (Voir Dire-Verdict) Recommendations

Standardized Juror Questionnaires

7

Pre-voir dire questionnaires are desirable and beneficial. Model questionnaires should be developed for both civil and criminal cases, enabling lawyers to have a preview of jurors' backgrounds. In-court voir dire can then be limited to case-specific inquiries (subject to reasonable time limitations imposed by the court) and any follow-up questions necessary to clarify written answers.

Discussion:

Using standardized questionnaires, completed by prospective jurors before voir dire commences, can provide a uniform inquiry of jurors, promote streamlined jury examination, and enable jurors to answer questions in a more reflective, relaxed atmosphere. Questionnaires are useful in obtaining accurate juror information without lengthy voir dire. The use of general background questionnaires will not only elicit detailed, candid information about the jurors, but also allow voir dire to be more focused. Studies suggest that jurors provide far more insightful information through written questionnaires than they do verbally in open court.

Managing written questionnaires can be complicated and costly. In addition, problems may arise in relation to jurors who are unable to read. Furthermore, developing standard questions related to particular types of cases may be difficult to construct and potentially impossible to administer prior to jury panels being sent to particular courtrooms. The form adopted by the Supreme Court as form 1.984 (Juror Voir Dire Questionnaire), Florida Rules of Civil Procedure, should be used as a starting point for the development of a more detailed form for both civil and criminal cases.

Jury Size

8 **There should be no reduction in the size of either criminal or civil juries.**

Discussion:

Subject to constitutional limitations, modifications to the required size of the jury could reduce the number of jurors needed for jury selection, expedite the trial, and promote shorter jury deliberations. However, a reduction in the size of the jury might well result in a less reliable jury verdict. Therefore, the Committee opposes any across-the-board reduction in the size of juries from the present 6 and 12.

However, consideration should be given to amending section 913.10, Florida Statutes, to allow the state to unilaterally obtain a six-person jury by waiving the death penalty in a capital case. In addition, it should be noted that the Committee is aware of the Florida Supreme Court opinion in *Blair v. State*, 698 So. 2d 1210 (Fla. 1997), wherein the Court upheld the waiver of a six-person jury by a criminal defendant, holding that while the circumstances of a valid waiver may vary from case to case, such waiver must be done knowingly, intelligently, voluntarily, and on the record.

Expedited Trials

9 When used properly, expedited trials can be a useful tool to save jurors' time. A newly enacted but underutilized provision, section 45.075, Florida Statutes, establishes the procedures for expedited civil trials, that is, trials which must be limited to one day, but may involve a jury. In order to encourage the use of expedited jury trials, attorneys should be required by court rule to notify their clients in writing of the applicability of the expedited trial procedure. In addition, the attorney should be required to file a statement with the court that this notice has been provided to the client.

Discussion:

An expedited trial, which must occur upon the joint stipulation of the parties of a civil case, has a 60-day limit on discovery and must be tried within 30 days of the discovery cutoff. The plaintiff and defendant are limited to three hours each to present their cases, including opening and closing arguments. The Committee believes that the use of expedited trials, under appropriate circumstances, will save juror time and the expense connected therewith. Since the parties must stipulate to the use of expedited trials, an accurate appraisal of the number of such trials and the extent of time savings is impossible to predict at this time. The Committee also is of the opinion that all litigants should be notified of the availability of this procedure.

Further provision is made for stipulated "plain language" jury instructions at the beginning of the trial, a "plain language" jury verdict form, the use of a verified written report of an expert, and the use of excerpts from depositions, including video depositions, regardless of the availability or residence of the deponent.

[Note: Chapter 99-225, Laws of Florida, which created section 45.075, Florida Statutes, was declared to be in violation of Article III, Section 6, Florida Constitution, the "single subject" rule, in the circuit court of the Second Judicial Circuit, in *Florida Consumer Action Network v. Bush*, 8 Fla.L.Weekly, Supp. 233 (Fla. 2d Cir. Ct. Feb. 9, 2001). This order is presently under appeal.]

NOTICE OF EXPEDITED TRIAL

As your attorney I am required by the Florida Supreme Court to advise you of an Expedited Trial Program in use in Florida’s courts. Section 45.075, Florida Statutes, a copy of which is attached, sets forth a program for Expedited Trials in Florida. This program is intended to move cases to trial more rapidly than normal and to reduce the cost of the trial.

No party can be forced to participate in the Expedited Trial Program. It is my obligation, however, to advise you of the existence of this program so that you can tell me whether you would like your case to be expedited. Your case will be fast tracked and put into this program only if all of the parties in the lawsuit agree. Should any party refuse to participate, the case will remain as is and be handled in the usual manner.

Please review the enclosed copy of section 45.075, Florida Statutes, and call me so that I can discuss this program with you and answer any questions you may have.

Not all cases are good candidates for this program. I will discuss with you the advantages and disadvantages of the program and whether an Expedited Trial of your case is in your best interest. Should you decide to participate in this program, you will usually have your case resolved more quickly. By participating, however, you will not be able to conduct as much discovery (depositions, interrogatories, request for production of documents, etc.) and your trial will be limited to one (1) day. There are many other restrictions as well, all of which are described in the statute.

You are required to sign on the enclosed form. By signing you will either be agreeing to participate in the Expedited Trial Program or indicating that you do not want to participate.

Please sign this document on the appropriate line below and return it to me once you have fully studied the issues.

Signature of Client Agreeing to Expedited Trial

Date

Signature of Client Not Agreeing To An Expedited Trial

Date

STYLE OF CASE,

Plaintiffs,

vs.

Defendants.

_____ /

AFFIDAVIT OF CLIENT NOTIFICATION OF EXPEDITED TRIAL

I HEREBY CERTIFY that I have sent notification to my client at my client's last known address regarding the Notice of Expedited Trial in the above referenced case. Notification was sent by United States mail on ____ day of _____, 200__.

Signature for Attorney
Attorney for _____
Florida Bar No.: _____
Address: _____
Phone: _____

Professional Jurors

10

The use of professional jurors is not recommended. However, court-assisted arbitration panels (using experienced professionals) may be beneficial in relation to complex civil cases. Furthermore, courts should strictly curtail exemptions and excusals from jury service for professionals and business persons, thereby increasing the pool of jurors having expert knowledge and skills that can be useful in resolving complex issues. However, jurors with expert knowledge must be instructed not to let professional experience control their perception of the evidence.

Discussion:

Much of the academic debate about the jury system has focused on the use of professional jurors. Everyday in our courts, ordinary citizens are being asked to decide sophisticated issues in complex disputes that the parties have been unable to resolve. While professional jurors may enhance the reliability of verdicts in complex civil cases, the constitutional requirement of a cross-section of the community precludes its use in criminal cases. Moreover, since the idea of a jury of one's peers has its origins in the foundation of the Constitution and is intertwined historically with our rebellion from England, the idea of a professional juror has been in disfavor. Trial lawyers generally frown on using professional jurors, except in arbitration cases.

Anonymous Juries

11

Trial judges should be given discretion to empanel anonymous juries only when there is a strong reason to believe the jurors need protection. Judges should be required to consider a number of factors in determining if an anonymous jury is necessary, including the following: (1) type of crime or controversy involved; (2) likelihood of harm to jurors; (3) litigants' past attempts to interfere with the judicial process; (4) severity of potential sentence in a criminal case; and (5) nature of publicity. Consideration should be given to amending the Florida Rules of Judicial Administration to codify this procedure.

Discussion:

Given the thoroughness of the jury selection process, a typical juror is a decidedly known entity. In certain exceptional cases, however, it may be necessary to empanel an anonymous jury, one in which the jurors' names and other personal information are not disclosed. While this procedure can have an adverse impact on a criminal defendant's Fifth Amendment rights, it may be necessary in rare cases where there is a reasonable and objective fear for the safety of jurors during the trial. However, after completion of the trial, the reasons for such anonymity is greatly reduced and the names of the jurors ordinarily should be made public in the same manner as other cases.

Alternate Jurors

12

The current use of alternate jurors should be surveyed and studied. In addition, a pilot project should be conducted in one or more counties to evaluate a system of allowing alternate jurors to deliberate. At the present time, judges should be encouraged to not reveal to an alternate juror that person's status so as not to reduce the alternate's incentive to closely follow the trial. Under any circumstances, the number of alternates should be limited to those likely to be needed.

Discussion:

While the presence of alternate jurors increases the size of the jury panel, it provides insurance against a mistrial if jurors are unable to complete their service during trial. Jury selection literature suggests alternates generally do not replace jurors. Since the need for alternates may be overstated, there needs to be a pilot project and study to determine how alternates are actually used, the costs of alternates, the concept of allowing alternate jurors to deliberate, and the possibility of proceeding (by stipulation) with less than the full complement of jurors if one or more becomes unavailable. An example of a rule allowing all jurors to deliberate is rule 48, Federal Rules of Civil Procedure.

Pre-Voir Dire Judicial Statements

13

To encourage citizen participation in the jury system, judges should be permitted and encouraged to give brief pre-voir dire statements outlining the basic nature of the case. This will increase juror interest in serving on the jury and reduce the number of jurors requesting dismissal from service.

Discussion:

The Committee believes that the interest of jurors in serving on a jury can be increased if such jurors are informed of the nature of the case. While jurors may in general believe that service on a jury may be a waste of their time and perhaps even boring, there is evidence to indicate that such attitudes can sometimes be changed if jurors have a more concrete understanding of what a particular case may involve. In addition, such knowledge may operate to subtly impress upon jurors that their jury duty involves real persons and a real case. This approach is consistent with the general view of the Committee that the less abstract jury service is to the potential juror, the more likely it is to invoke the civic spirit of the juror.

The Committee acknowledges that the present system of pre-qualifying jurors typically occurs in the jury assembly room by either a jury clerk or manager or an orienting judge. This proposal could create additional logistical problems and some delay for trial judges and those who administer the jury system, yet the benefits of increased juror participation make it worthwhile.

Pre-Voir Dire Opening Statements By Attorneys

14

Judges should be encouraged to allow attorneys to make brief mini-opening statements to jurors *before* voir dire begins.

Discussion:

Jurors routinely complain of having no information about a case at the outset of jury selection, yet they are being asked questions which involve facts and issues arising from the case. The jury selection process should include a component to better educate jurors about the case and the likely issues and questions to be presented at trial.

While allowing such opening statements may increase the length of the jury selection process, they can help prospective jurors understand why certain questions are asked and the importance of a candid response. In addition, mini-opening statements to the jury panel may reduce, and possibly eliminate, the need to preface jury selection questions with a description or reference to anticipated evidence, a technique that often provokes an objection and intervention by the judge. It also affords the attorneys an early opportunity to introduce themselves, the litigants, and their cases.

Disadvantages to such opening statements all of which can be appropriately minimized by the trial judge include possibly increasing the time for jury selection, tempting attorneys to give their complete opening arguments rather than brief, non-argumentative statements designed to alert the panel members to issues likely to arise during voir dire, and expending judicial effort to keep attorneys within appropriate bounds without adding opportunities to engage one another in pretrial confrontations.

Peremptory Challenges

15

A comprehensive study of the use of peremptory challenges should be conducted. Issues to be studied should include the number of peremptory challenges, the use of such challenges in a discriminatory manner, the effect of peremptory challenges on jurors' perception of the court system, and whether peremptory challenges should be reduced in certain cases, such as matters involving multiple parties or class actions. This study could also consider whether peremptory challenges should be eliminated.

Discussion:

The Committee has not located a definitive study of the impact of peremptory challenges on the outcome of cases. A study of the effect of the exercise of peremptory challenges, comparing the verdict of selected jurors with the verdict that would have been reached by rejected jurors, would be valuable if such a study is feasible (perhaps through the use of “shadow” juries).

It was very difficult to reach a consensus on the issue of whether peremptory challenges should be reduced or eliminated. After significant hours of debate and numerous votes going both ways, the Committee was close to deadlock. The above recommendation of a comprehensive study of peremptory challenges was the ultimate consensus reached by the Committee.

Those favoring retention of peremptory challenges believe that the present system of peremptory challenges is beneficial in removing biased jurors who may not be subject to removal for cause. They believe that the abolition of peremptory challenges would result in persons who cannot fairly evaluate their cases serving on juries. Another argument in favor of retaining peremptory challenges is that the trial lawyers are more intimately involved in the case and are better able than judges to identify jurors who cannot fairly evaluate the evidence and their positions. They strongly believe that peremptory challenges, if properly employed, can serve to remove jurors with extreme views on either side of the issue who might otherwise survive a cause challenge.

Those in favor of the elimination of peremptory challenges argue that such elimination be accompanied by a strengthening and clarification of the cause challenge system. This would enable judges to remove potential jurors who are manifestly unable to fairly evaluate the case or are biased. They also believe

that a valuable side effect of this reform would be to end or reduce the substantial amount of litigation generated from the use of peremptory challenges for impermissible reasons. Those favoring abolition further believe that one of the historical reasons for the existence of peremptory challenges, was to keep certain racial groups off juries. This, in their view, provides an independent justification for changing the system.

Questions by Jurors

16

Jurors in both civil and criminal trials should be permitted to submit to the judge written questions to be asked of witnesses by the judge. The judge has the discretion to determine which jury questions are to be asked of witnesses. The Supreme Court should incorporate this right into the rules of civil and criminal procedure.

Discussion:

Section 40.50, Florida Statutes, which became effective on October 1, 1999, and which applies to civil cases only, provides in relevant part:

- (3) The court shall permit jurors to submit to the court written questions directed to witnesses or to the court. The court shall give counsel an opportunity to object to such questions outside the presence of the jury. The court may, as appropriate, limit the submission of questions to witnesses.
- (4) The court shall instruct the jury that any questions directed to witnesses or the court must be in writing, unsigned, and given to the bailiff. If the court determines that the juror's question calls for admissible evidence, the question may be asked by court or counsel in the court's discretion. Such question may be answered by stipulation or other appropriate means, including, but not limited to, additional testimony upon such terms and limitations as the court prescribes. If the court determines that the juror's question calls for inadmissible evidence, the question shall not be read or answered. If the court rejects a juror's question, the court should tell the jury that trial rules do not permit some questions and that the jurors should not attach any significance to the failure of having their question asked.

There are no reported cases interpreting this statute. However, prior to the enactment of this statute, Florida courts addressed the issue of whether to permit jurors to ask questions of witnesses. Although the courts have found that questioning by jurors is permissible, the practice has not been strongly encouraged. See *Watson v. State*, 651 So. 2d 1159 (Fla. 1994); *Patterson v. State*, 725 So. 2d 386 (Fla. 1st DCA 1999).

The procedure accepted by the courts and incorporated into the new statute

requires that the questions be put in writing, that counsel have an opportunity to object to the questions out of the jury's presence, and that the judge determine whether the question is appropriate. The Committee believes that rules governing jury trials are more appropriately addressed by the Supreme Court in its rule-making capacity rather than by the Legislature. The pros and cons of allowing jurors to ask questions are set forth as follows in the reports from the District of Columbia, Colorado, Arizona, and California.

Potential benefits include:

1. The accuracy of the decision-making process will be improved.
2. Jurors will be more confident in their verdict and satisfied that they possessed all of the information necessary to reach a correct verdict.
3. Jurors will be more involved in the trial process, which could heighten their overall satisfaction with the trial.
4. Allowing the jury to play a more active role will instill in jurors a better understanding of the importance of their responsibility.
5. The asking of questions may help inform the attorneys about issues in the case that the jurors do not understand and what points need further clarification.
6. Juror questions may reveal important evidence or issues that were not covered by the lawyers.

Potential problems include:

1. Jurors might ask inappropriate or prejudicial questions because they do not know the rules of evidence and procedure, but this will be balanced by the trial judge making the final decision on whether the question is appropriate and should be asked.
2. Juror questions might upset an attorney's strategy or result in unwanted surprises.
3. An individual juror's question and the answer elicited may take on a stronger significance to the jury than those questions and answers presented and received in the normal adversarial manner.

4. Jurors who are the most active in the trial may be the most influential during deliberations.

The Committee believes the benefits *strongly outweigh* any potential harm. However, in addition to the concerns expressed in these reports, several other practical difficulties may arise. For example, when expert testimony in civil cases is presented by deposition, there is no possibility of questioning the witness and therefore certain inequities may arise. Further, the procedure for writing down the questions can raise other problems. If the question is written by the juror in court, it may be obvious which juror is writing it, even if it is unsigned. If the jurors adjourn to the jury room to consider their questions, they may begin to discuss the questions. Whether these issues should be left to the discretion of the trial judge or should be dealt with in the proposed rule remains a question.

Although the Committee understands that standard jury instructions are developed by separate committees, we recommend the inclusion of an instruction on juror questions in the introductory instructions in both civil and criminal cases. The instruction developed by the District of Columbia Jury Project may serve as a model.

[Note: Chapter 99-225, Laws of Florida, which created section 45.50, Florida Statutes, was declared to be in violation of Article III, Section 6, Florida Constitution, the “single subject” rule, in the circuit court of the Second Judicial Circuit, in *Florida Consumer Action Network v. Bush*, 8 Fla. L. Weekly, Supp. 233 (Fla. 2d Cir. Ct. Feb. 9, 2001). The order is presently under appeal.]

Discussion of Evidence Prior to Deliberations

17

Jurors in civil trials only should be instructed that they are permitted to discuss the evidence in the jury room during recesses from trial, when all jurors are present, as long as they reserve judgment about the outcome of the case until deliberations commence. The Supreme Court should incorporate this right in the rules of civil procedure and/or the standard jury instructions for civil cases. Extension of this innovation to the criminal area should await further study in light of the significant constitutional rights which could be affected.

Discussion:

In recent years, juries have come under attack over the reliability and soundness of particular decisions (e.g., the Nanny trial, the first Rodney King beating trial, the Menendez brothers, and the McDonald's coffee spill lawsuit). Public opinion poll results widely disseminated by the media show that many members of the public say that they did not agree with the jury verdicts in these cases, questioning the competency of juries. In the wake of this criticism, there have been a number of court cases which have attempted to limit the power of juries. (Hans, 1998). We acknowledge that such controversial decisions by juries may serve to undermine the public's confidence in the jury system. However, the Committee believes that the remedy should be changes *which empower juries with the tools necessary to render sound verdicts, rather than an effort to limit the power of juries.*

Juries are presently prohibited from talking among themselves about the case until the judge directs them to deliberate. Through enforced passivity, jurors are expected to merely store all evidence for later use and to suspend all judgments until the trial is over. The assumption is that pre-deliberation discussions of the evidence by jurors will inevitably lead to premature judgments about the case. We believe that expecting jurors to wait for final deliberations is unnatural, unrealistic, and unwise. Prohibiting jurors from talking about the case as the trial progresses may be contrary to basic human psychological needs and the adult learning process, and contribute to juror boredom/inattentiveness and juror stress.

The Committee believes that the ability to discuss trial evidence prior to the start of deliberations is an essential part of the reform necessary to enable jurors to make competent decisions and restore the public's faith in

the jury system. We also believe that the traditional rule forbidding all discussions is anti-educational, and not necessary to ensure a fair trial.

Some observers of the courts also suggest that in view of the fact that pre-deliberation discussions will occur regardless of whether or not they are permitted, the interests of justice are better served by giving jurors guidance on when and how such discussions should take place. By their own admission to jury researchers, at least 11 to 44% of jurors discuss the evidence among themselves before deliberations. (Arizona Jury Report, 1994, 97). Jury reform commissions in Arizona, California, Colorado, and Washington, D.C. have recommended that jurors be allowed to discuss among themselves the evidence as the trial progresses, rather than wait until the final deliberation.

Opponents argue that all trials are a piece-by-piece presentation of evidence, with one of the parties going first and the other(s) waiting to present their evidence at a later time. The fear is that if the jury discusses the matter prior to hearing all of the evidence, the arguments of counsel, and the instructions on the law of the particular case, the jury could reach a decision and become intractable, or certain jurors could dominate the process. Trial experience in Arizona suggests otherwise.

The State of Arizona has implemented this recommendation for civil trials (Rule 39(f) of the Arizona Rules of Civil Procedure) providing four years of experience regarding this practice. Studies of trial participants and jurors attitudes/perceptions have revealed a number of benefits for jurors, including: comprehension of evidence and preliminary instructions on the law are enhanced; memories and impressions of testimony are better shared and questions are answered on a timely basis; jurors get to know each other better and some "bonding" occurs; group questions can be better framed and submitted to the court; juror stress is reduced; and deliberations are more focused and efficient since the jurors have already dealt with much of the evidentiary background. (*Jurors: The Power of 12*, 1999).

The National Center for State Courts (NCSC) conducted a six-month experimental study in the Fall of 1997 of 200 civil trials in four Arizona counties. The trials were randomly assigned to two groups - one allowing discussions of evidence prior to deliberations, and the other one not allowing any discussion among jurors until all of the evidence, attorney arguments, and the judge's instructions on the law had been presented and the jury instructed to begin its final deliberations. The final study consisted of 161 civil cases: 76 in

group one allowing discussion of evidence and 85 in group two limiting discussion of evidence to final deliberations. The NCSC administered post-trial questionnaires to participating judges, attorneys, litigants and jurors to determine if the ability to discuss the evidence affected the trial outcomes, the jury deliberation process, or perspectives of the trial participants.

Notable findings of the study included the following: (1) There was no difference in juror's self reports of when they started leaning and when they made up their minds about who should win the case between the two groups. (2) Jurors who were permitted to discuss the case reported that they were more sure about their verdict preferences at the beginning of final deliberations than jurors who were prohibited from discussing the case. (3) There was no difference in the rate of judicial agreement with the verdict between the two groups. (4) Jurors who were permitted to discuss the evidence during trial were more likely to engage in informal, albeit prohibited, discussions among themselves, but were slightly less likely to discuss the case with family or friends.

Suggested jury instruction in civil cases only, based on Colorado and Arizona language.

*There is only one exception to this rule (the prohibition against discussing the case with anyone). During the trial you may talk **with each other** about the evidence, but **only privately** in the jury room during recesses **when all jurors are present**. However, remember your oath as a juror to **not** make up your minds about who should prevail in the case until you have heard all the evidence, my instructions of law, arguments of counsel, and you are in the jury room deliberating on a verdict.*

Note-Taking By Jurors

18

Jurors in both civil and criminal trials should be permitted to take notes and be advised they may do so. This right should be incorporated into the rules of civil and criminal procedure. Such rules would clarify that juror notes may be taken with them from the courtroom to the jury room. These notes may be shared with other jurors, but must be destroyed after the verdict is delivered. Appropriate jury instructions must be given.

Discussion:

Section 40.50 (2), Florida Statutes, provides:

In any civil action which the court determines is likely to exceed 5 days, the court shall instruct that the jurors may take notes regarding the evidence and keep the notes to refresh their memory and to use during recesses and deliberations. The court may provide materials suitable for this purpose. The court should emphasize the confidentiality of the notes. After the jury has rendered its verdict, any notes shall be collected by the bailiff or clerk who shall promptly destroy them.

The Florida Supreme Court recently (July 6, 2000) issued an opinion adopting new standard jury instructions in civil cases relating to note-taking by jurors. However, the “notes on use” state that it is within the court’s discretion to allow the jurors to take notes, citing *Kelley v. State*, 486 So. 2d 578 (Fla. 1986). In addition to providing an instruction to be given when note-taking is permitted, an instruction is provided for when the court decides that the jurors should not take notes. (Both instructions are attached).

There appears to be a conflict between the statute and the standard jury instructions, at least in cases expected to last more than 5 days. The Supreme Court makes reference to Florida Statute 40.50(2) and “recent innovations in jury trial procedures in other jurisdictions” and refers the matter of note-taking to the Civil Procedure Rules Committee.

The Committee believes that the benefits of note-taking clearly outweigh any disadvantages, that this has been demonstrated by several studies,¹ that there is no basis to make a distinction between civil and criminal cases², and that the length of the trial should not be the controlling factor in determining whether note-taking is permitted.

There is some disagreement among the states regarding the disposition of the notes following discharge of the jury. In California, the Commission on Jury System Improvement suggests that the trial judge decide whether the notes should be destroyed or kept by the jurors. We recommend that the notes always be destroyed, as is mandated in section 40.50, Florida Statutes, and as is the case in the District of Columbia, Arizona, and Colorado.

In summary, the Committee recommends that the procedure for note-taking set forth in new standard jury instruction 1.8 (a) be adopted for all cases and that, if necessary, the rules of civil and criminal procedure provide for note-taking by the jurors.

[Note: Chapter 99-225, Laws of Florida, which includes section 40.50, Florida Statutes, was declared to be in violation of Article III, Section 6, Florida Constitution, the “single subject” rule, in the circuit court of the Second Judicial Circuit, in *Florida Consumer Action Network v. Bush*, 8 Fla. L. Weekly, Supp. 233 (Fla. 2d Cir. Ct. Feb. 9, 2001). The order is presently under appeal.]

¹ Heuer and Penrod, “Increasing Juror Participation Through Note Taking and Question Asking,” 79 *Judicature* 256 (1996).

² It is interesting to note that in Arizona, note-taking has been allowed in criminal cases for more than 20 years, and is now permitted in civil cases as well.

FLORIDA CIVIL JURY INSTRUCTIONS

NOTE-TAKING BY JURORS

a. Note-taking permitted

If you would like to take notes during the trial, you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you individually.

You will be provided with a note pad and a pen for use if you wish to take notes. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the bailiff will take possession of your notes and will return them to you when we reconvene. After you have completed your deliberations, the bailiff will deliver your notes to me. They will be destroyed. No one will ever read your notes.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Your notes should be used only as aids to your memory.

Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than each juror's memory of the evidence.

Notes On Use

1. It is within the court's discretion to allow the jurors to take notes. *Kelley v. State*, 486 So. 2d 578 (Fla. 1986). If note-taking is allowed, the court should furnish all jurors with the necessary pads and pens for taking notes. Additionally, it may be desirable for jurors to be furnished with envelopes to place notes in for additional privacy.

2. Note-taking permitted, 1.8a, should be given as part of preliminary instructions when the judge has decided to allow jurors to take notes.

b. Note-taking not permitted

A question has arisen as to whether jurors may take notes. You are instructed not to take notes. One of the reasons for having several persons on the jury is to gain the advantage of your individual memories concerning the evidence. A juror engrossed in note-taking may miss evidence or fail to appreciate the demeanor of a witness. Additionally, there may be a tendency for jurors to rely on others' notes and be less attentive during the trial or during deliberations to abandon their recollections of the evidence in favor of the written notes of another.

Notes On Use

Note-taking is not permitted, 1.8b, may be given at any time during the trial the

question is raised or as part of the preliminary instructions.

Videotapes for Absent Jurors

19

A procedure of videotaping court proceedings for subsequent review by jurors should not be adopted.

Discussion:

The Committee would be most troubled by the use of this procedure in relation to criminal trials, where the right of a defendant to a fair trial might be unnecessarily jeopardized, depending on the method employed by the playback procedure. While these concerns would be lessened in a civil context, the Committee still believes that the potential complications outweigh any benefits.

Interim Commentary

20

Judges should be given discretion to permit brief interim commentary by counsel, under appropriate circumstances, in civil and criminal trials of at least three days duration.

Discussion:

The Committee believes that interim commentary would be particularly helpful in lengthy or complex litigation. It could aid jurors by allowing the attorneys to explain the case in manageable segments more easily understood by the jury.

Possible approaches to such interim commentary could be to allow each side an allotment of time (perhaps 60 minutes), which could be utilized throughout the trial in the discretion of the attorneys, or to allow each attorney a short period of time at the end of each day (perhaps 3-5 minutes) to summarize that day's proceedings.

Advantages of such interim commentary include increasing juror comprehension by allowing jurors to consider the evidence in the context of the theory of the case, buttressing limiting instructions by the court regarding the purpose of evidence, allowing attorneys to place evidence in context, and keeping jurors focused on the evidence. A concern was raised that jurors may focus on the commentary rather than the evidence but appropriate cautionary instructions reduce that likelihood.

Deposition Summaries

21

Deposition summaries may be used in civil trials. However, their use in criminal proceedings should not be permitted.

Discussion:

In relation to civil cases only, the Committee believes that deposition summaries serve a useful function, particularly in relation to lengthy depositions. Such summaries would be a joint effort of both sides. The function of the judge would be to resolve disputes about the content of the summaries.

The Committee believes that there may be constitutional impediments to a court rule mandating the use of deposition summaries (or allowing the court to make the decision) in criminal cases. While not objecting to the introduction of summaries *by stipulation* of both the state and defense, the Committee is of the opinion that the use of such summaries over the objection of either the state or defendant would be inadvisable.

Advantages of deposition summaries, if utilized properly, can include saving jury time during the trial, aiding juror comprehension, and avoiding the tedium of reading entire depositions. Deposition summaries can also have disadvantages, including the expenditure of time by litigants in summarizing depositions and resolving disputes over their content and the possible misuse of such summaries.

Expanding the Use of Depositions in Civil Cases (100 Mile Requirement)

22

The civil rule requirement that a witness must be a greater distance than 100 miles from the place of a trial as a prerequisite for the use of that person’s deposition at trial should be repealed.

Discussion:

The Committee believes that, with the increased use of videotaping, a provision limiting the use of depositions of persons less than 100 miles distance from a trial, that is, rule 1.330 (a) (3), Florida Rules of Civil Procedure, is *antiquated* and only operates to unnecessarily inconvenience witnesses and jurors. Nothing in this recommendation would preclude an opposing party from calling a deposed witness if the party believes that the in-person testimony of that witness is necessary.

Juror Notebooks

23

Juror notebooks, which can serve a useful function (especially in civil cases) in lengthy and complex trials, should be specifically authorized by court rule.

Discussion:

The Committee believes that the use of a juror notebook, the content of which is controlled by the court, is a worthwhile innovation. It was noted that, in the absence of any prohibition, such notebooks have already been used in civil cases. The categories of documented information to be placed in such notebooks could be identified by the court and attorneys.

Examples of materials that may be included in such notebooks are preliminary jury instructions, short statements of claims and defenses, witness lists and photographs of key witnesses, a copy of important exhibits, a glossary of technical terms, a seating chart of all trial participants, and final jury instructions (replacing preliminary instructions). These notebooks would be secured during overnight recesses. Jurors would be allowed to take the notebooks with them to the jury room during recesses and for deliberations.

Computer-Aided Presentations

24

Trial judges should encourage the use of computer-aided presentations during trial, where appropriate.

Discussion:

The Committee believes that technical advances such as, *Powerpoint*, *Presentations*, or similar software, should not be resisted if they can assist jurors in understanding relevant facts and issues. The Committee observes that since technology will inevitably play an increasing role in courtrooms, trial court judges should encourage its use as an important tool to increase juror comprehension.

Simple and Clear Instructions

25

All instructions should be as simple and clear as possible.

Discussion:

The legalese and other technical jargon frequently used by attorneys and judges during trial is lost on most jurors and is a major source of confusion and frustration for them. The high rate of failure of jurors to fully understand legal instructions is well documented.

This recommendation, also known as the “plain English” rule, has been implemented in various ways, including establishing a committee which includes linguists, communication experts, and former jurors to review all standard instructions. This recommendation, or one similar to it, has been adopted in Arizona, California, Colorado, New Hampshire and West Virginia. It is also an ABA Civil Trial Practice Standard.

Written Jury Instructions

26

Copies of the written jury instructions should be given to jurors for their use during deliberations.

Discussion:

Studies have shown that providing jurors with written copies of the jury instructions increases their understanding of the instructions, helps to structure and facilitate deliberations, reduces the number of questions about instructions during deliberations, and increases jurors' confidence in their verdict.

There are only minor drawbacks to providing written instructions, such as placing jurors who are unable to read at a disadvantage, and requiring some additional time and effort by the court, thereby possibly increasing the cost of the trial. In Arizona, this was considered a "non-controversial rule change." This recommendation, or one similar to it, has been adopted in Arizona, New Hampshire, West Virginia, and the District of Columbia. It is also an ABA Civil Trial Practice Standard. It is already required in Florida in capital cases and authorized in non-capital cases. See rule 3.390 (b), Florida Rules of Criminal Procedure.

Preliminary Jury Instructions

27

Case-specific preliminary jury instructions should be given at the outset of trial. In complex or technical cases, definitions of terms and other information to help orient the jury should be included.

Discussion:

Research indicates that the more jurors are informed in advance about the substantive issues in a case, the better their recall, understanding, and ability to organize and apply instructions to this information. Research also indicates that, along with this increased comprehension comes greater juror satisfaction and increased opportunity for a just result. One commentator has observed that not giving pre-instructions is like telling jurors to watch a baseball game and decide who won without telling them the rules until the end of the game.

The advantages of this technique are several. Case specific, substantive preliminary instructions have been strongly endorsed by studies involving jurors, lawyers, and judges as being of great value to jurors in (a) improving their recall; (b) focusing their attention on the relevant evidence; (c) reducing their chances of applying the wrong rule or standard to the evidence; (d) reducing the number of questions during deliberations; (e) creating more informed verdicts; and (f) increasing juror satisfaction. A set of definitions of common terms in cases with conflicts or scientific testimony can significantly aid the jury in understanding the testimony. It may be appropriate in certain cases to distribute to jurors written glossaries of complex, technical or scientific terms that may arise during the trial.

There are also some disadvantages, namely that disputed factual and legal issues are necessarily subject to change during the course of the trial and judges may be reluctant to make adjustments in final instructions about issues that have been “already decided” as part of the preliminary instructions.

This recommendation, or one similar to it, has been adopted in Arizona and the District of Columbia, and is pending in California. The bifurcation of instructions has also been recommended by the Florida

Supreme Court.³ It is also one of the ABA's Civil Trial Practice Standards. Some jurisdictions address these issues by preparing juror notebooks or glossaries.

³ See *In the Matter of the Use By the Trial Courts Of the Standard Jury Instructions In Criminal Cases and the Standard Jury Instructions in Misdemeanor Cases*, 431 So. 2d 594 (Fla. 1981).

Interim Instructions

28

Interim instructions, as deemed necessary, should be utilized in civil trials by the judge to explain matters that arise in the course of the trial, such as evidentiary issues.

Discussion:

The benefits and advantages noted in relation to preliminary instructions apply to this recommendation as well. The jury literature noted no significant disadvantages to this innovation. This recommendation or one similar to it has been adopted in Arizona, Colorado and the District of Columbia. It is also one of the American Bar Association's Civil Trial Practice Standards.

Procedures for Jury Deliberations

29

In both civil and criminal cases, judges should instruct jurors on procedures for conducting their deliberations, including an instruction suggesting to the jury how it should use the instructions during deliberations. Jurors should be given instructions on how to organize their deliberations and what assistance, if any, they can ask of the court. Jurors need to be instructed that no new evidence can be presented to them once their deliberations have begun. The Committee suggests that the trial judge refer to the American Judicature Society's publication entitled *Behind Closed Doors, A Guide to Jury Deliberations*.

Discussion:

Many jurors express frustration at not receiving guidance on how to proceed in the deliberation room. According to these jurors, considerable time is often wasted while jurors simply try to figure out how to get started. A jury that is instructed on how to use the instructions on the law arrives at better verdicts in the sense that such verdicts are more likely based on the law. A jury that applies the instructions in a systematic way is less likely to overlook key elements of law. This proposal should reduce the amount of time spent in deliberations.

This recommendation may improperly interfere with an attorney's prerogative to present the case as the attorney sees fit and therefore interfere with counsel's prerogative. Sometimes attorneys do not provide this type of guidance for strategic reasons. They may not want the jury to focus on the law, as doing so may be detrimental to their case.

This is an ABA Civil Trial Practice Standard, and this recommendation, or one similar to it, is pending in California and under review in the District of Columbia. Samples of such instructions appear in Recommendation 29, in *Jurors for the Year 2000 and Beyond*, published by Council for Court Excellence, District of Columbia Jury Project and in the *Loyola of Los Angeles Law Review*, Volume 30, "The Road to Reform: Judges on Juries and Attorneys."

Juror Comfort During Deliberations

30

Reasonable amenities, such as recesses, snacks, and refreshments, should be provided to deliberating jurors. The State of Florida should reimburse the county for the costs thereof.

Discussion:

Jurors should be allowed to have recesses during deliberations at their request. Certain safeguards need to be in place so that the jurors cannot separate and a bailiff should be present. Recesses are needed to relieve the stress that jurors may be under while confined to the jury room, to accommodate jurors who smoke, have special dietary needs, take medication, and need the use of restroom facilities. There should also be a funding mechanism for the costs of juror snacks and beverages during deliberations.

Final Instructions Before Closing Arguments

31

Judges should be encouraged to deliver their final instructions to the jury *before* closing arguments.

Discussion:

Section 40.50 (5), Florida Statutes, states that:

The court may give final instructions to the jury before closing arguments of counsel to enhance juror's ability to apply the law to the facts. In that event, the court may withhold giving the necessary procedural and housekeeping instructions until after closing arguments.

States adopting this reform have concluded that jurors will be in a better position to listen to the closing arguments by counsel with a discerning ear, integrating the evidence with the standards of law explained to them before, rather than after, arguments. Jurors also may be less likely to be inappropriately persuaded by closing arguments, using legally correct guidelines in their evaluation of evidence. The jury may spend less time in deliberations trying to understand the instructions if the jury hears them first and then has the lawyers discuss their application to the case. In addition, litigants and trial attorneys will have the benefit of directly referring to the court's instructions in their arguments, thus eliminating the problem of explaining legal issues with which the jury may be unfamiliar or of "predicting" what instructions the judge will give.

If substantive jury instructions are delivered before closing arguments, the judge should provide instructions on administrative matters, including procedures on deliberations (see separate recommendation on this subject), after closing arguments in order to allow the judge to have the last word, remind the jury of its responsibilities, and mitigate any potential bias created by the litigants or their attorneys. This recommendation, or one similar to it has been partially implemented in the District of Columbia, but was not adopted in Arizona. The ABA Civil Trial Practice Standards suggest judges "consider" this recommendation.

[Note: Chapter 99-225, Laws of Florida, which includes section 45.50, Florida Statutes, was declared to be in violation of Article III, Section 6, Florida Constitution, the “single subject” rule, in the circuit court of the Second Judicial Circuit, in *Florida Consumer Action Network v. Bush*, 8 Fla. L. Weekly, Supp. 233 (Fla. 2d Cir. Ct. Feb. 9, 2001). The order is presently under appeal.]

Judicial Answers to Deliberating Jurors' Questions

32

Trial judges should be as responsive as possible and fully answer deliberating jurors' questions, consistent with applicable case law. The trial judge, when possible, should not ask jurors to rely on their "collective memory" when the judge is faced with questions from a deliberating jury, but rather respond more directly to their inquiries.

Discussion:

Almost all questions posed by the jury deserve the courtesy of a responsive answer. The jury's function is to reach an accurate and fair result based on evidence and instructions of law. If the jury asks questions, the questions should be answered to the extent reasonably possible. The failure of too many judges to fully and fairly respond to questions and requests from deliberating juries is well documented and is another major source of "static" in jury comprehension. In one study, researchers found with "unexpected homogeneity" that judges answered questions that sought clarification of instructions by simply referring the jury to the instructions without further comment, and that questions regarding evidence were similarly dispatched with the jurors merely being told to rely upon their "collective memories" of the evidence.

If juror confusion is cleared up, an accurate and fair verdict is more likely. Jurors will not have to guess at the answer in reaching their verdict. The Committee is aware there is a fear among trial judges that they may cause reversible error by answering jurors' questions. However, the Committee feels strongly that the court can avoid such a problem by answering the questions in a manner consistent with applicable case law. This recommendation, or one similar to it, has been adopted in Arizona and Colorado.

Read-Back of Testimony

33

The Supreme Court should develop specific criteria for denying a read-back request. Such criteria could include relevant factors, such as whether the requested testimony is too lengthy or too vague. While the trial judge should have discretion in granting or denying the read-back of testimony, such a read-back should *not* be denied unless the court finds that one of the criteria, such as excessive length or vagueness, is met.

Discussion:

Jurors should understand that they may request to have the testimony of a witness read back by the court reporter. While the Committee believes that the reading back of testimony may be instrumental in resolving a deadlock, there was opposition to allowing jurors to have the final word in determining whether there should be a read-back or the extent thereof. The court should make the decision after hearing from all parties. The Committee, however, believes that the use of a read-back should be liberally employed particularly when the jury or judge believes it could operate to break an impasse.

To aid in the speed of deliberations, it is recommended allowing only a portion of testimony to be re-read for the jury if it requests same. Thus, the jury should be advised that the entire testimony of a particular witness can be read back or only a portion thereof.

Juror Impasse

34

Trial judges in criminal and civil cases should be allowed to assist deliberating juries in reaching a verdict where an *Allen*⁴ charge has been given and the jury continues to report that they are deadlocked. Jurors should know exactly what can occur if they cannot reach a verdict, that is, what a mistrial actually means.

Discussion:

If a jury is deadlocked, a judge should ask the jurors if they would like the attorneys to give additional argument on a particular issue. If the answer is in the affirmative, the presiding juror should describe the issue in writing to the court, which should submit it to the attorneys. If appropriate, limited closing argument on this issue alone should be allowed. The jurors would then be given a reasonable time to continue their deliberations.

The Committee believes that the standard juror instructions should be amended to explain to the jury, in neutral terms, the effect of a mistrial so that jurors are aware of what happens if they fail to reach agreement. This approach would improve the chances of a verdict, avoid needless mistrials, enhance the truth-seeking and educational aspects of the trial, and increase juror satisfaction with the process.

⁴ The *Allen* charge refers to the 1896 opinion of the United States Supreme Court in *Allen v United States* 17 S. Ct. 154 (1896).

Less Than Unanimous Verdicts

35

In criminal cases, no consideration should be given to less than unanimous verdicts, unless upon stipulation of the defendant, irrespective of whether initiated by the judge, an attorney, or the defendant. However, there should be some consideration to generally allowing the attorneys and parties to stipulate to less-than-unanimous verdicts in civil cases under appropriate circumstances.

Discussion:

The Committee believes that the reduction of the traditional jury size from 12 to 6 (except in capital and eminent domain cases) reduced the need for less than unanimous juries in the vast majority of criminal and civil cases. See Article I, Section 22, Florida Constitution, and sections 69.071, 73.071(1), and 913.10, Florida Statutes.

However, in civil cases where the parties agree, the Committee believes that a less-than-unanimous verdict may be permissible upon stipulation of the parties. This would be similar to the way in which parties may stipulate to less than the required number of jurors, if less jurors than such number are available for deliberations.

While the Committee believes that the law should not be changed to mandate less-than-unanimous verdicts, it believes that serious consideration should be given to clarifying the necessary procedure in relation to waiver of a unanimous jury by a criminal defendant. In *Flanning v. State*, 597 So. 2d 865 (Fla. 3d DCA 1992), that court established a four-prong test for such a waiver, including a requirement that the waiver be initiated by the defendant. See also *Reid v. State*, 782 So. 2d 1171 (Fla. 3d DCA 1999). The Committee is of the opinion that as long as the waiver is knowing, intelligent, and voluntary it should be allowed.

Juror Treatment and Compensation Recommendations

Juror Bill of Rights

36

Florida should adopt a juror bill of rights. The Supreme Court of Florida should adopt a rule to such effect and/or have the Chief Justice issue an administrative order.

Discussion:

Jurors are called upon each day to make significant decisions regarding life, liberty, property, and other issues of great public importance. Jury service is a right and obligation under our democratic form of government. For too long, jurors have been taken for granted by those in the court community. They have been viewed by many as a commodity and not as a valuable community resource. Often, their time has been poorly managed and their interests placed secondary to those of the local legal culture. By proclaiming publicly that the court cares about the quality of the juror experience and values the time of jurors, the Florida State Courts System will send a strong message to all citizens that they are an integral aspect to the justice system.

A Proposed Bill of Rights For Florida Jurors

1. Jurors shall be treated with courtesy and respect with appropriate regard for their privacy.
2. Jurors shall be randomly selected for jury service, free from discrimination on the basis of race, ethnicity, gender, age, religion, sexual orientation, economic status, or disability.
3. Jurors shall be provided with comfortable and convenient facilities, with appropriate and reasonable accommodation for the needs of jurors with disabilities.
4. Jurors shall be kept informed of trial schedules as often as possible.
5. Jurors shall be informed of the trial process and of the applicable law in plain and clear language.
6. Jurors shall be allowed to take notes during trial and to ask questions of witnesses or the judge and to have those questions answered as determined by the judge and permitted by law.
7. Jurors shall be fairly compensated for their jury service.
8. Jurors shall be entitled to have questions and requests that arise or are made during deliberations as fully answered as allowed by law.
9. Jurors shall be offered appropriate assistance from the court when they experience serious anxieties or stress, or any trauma, as a result of jury service.
10. Jurors shall be protected against retaliation by employers because of jury service.
11. Jurors shall be able to express concerns, complaints and recommendations to courthouse authorities.
12. Jurors shall be told of the circumstances under which they may discuss the evidence during the trial among themselves in the jury room, while all are present, as long as they keep an open mind on guilt or innocence or on which party should prevail.

Juror Parking

37

The State of Florida should pay for juror parking in all counties.

Discussion:

Prior to 1993, citizens reporting for jury duty received \$10 per day and 14 cents per mile. This money, although nominal, permitted jurors to pay for any ancillary costs associated with reporting for jury duty, including parking. In 1993, the Legislature reduced the term of service from one week to either one day or the conclusion of one trial. The rate of compensation also changed. Pursuant to section 40.24, Florida Statutes, jurors now receive \$30 for the fourth day of service and every day thereafter. However, there is a provision whereby jurors who are not regularly employed or who do not continue to receive regular wages are entitled to receive \$15 daily reimbursement for the first three days of service.

Jury service, which necessarily includes parking, is a state function and therefore should qualify as an Article V judicial cost under the state constitution no later than 2004. In 65 of 67 counties, juror parking is provided by the county at no cost to jurors. Based upon a survey of all 20 judicial circuits conducted by the Committee in the spring of 2000, parking costs are billed and budgeted as part of the annual operating budget for several counties, including Leon, Manatee, Hillsborough, Palm Beach, and Monroe.

In other counties, like Miami-Dade, jurors pay \$2-\$10 per day, depending on the lot in which they park. This is a tremendous and constant source of irritation for jurors who feel as though they are being taken advantage of by the court system. Moreover, this sends a message, albeit unintended, that the courts are not sensitive to the inconvenience and expense associated with jury duty in these counties. Since jury service is an inconvenience for many, the Committee believes that the State of Florida should pay for juror parking in *all counties* as part of its basic obligation to jurors. The estimated statewide annual cost is \$510,000.

Juror Time Management

38

American Bar Association (ABA) Standard 13: *Juror Use* should be adopted as a proposed rule of judicial administration (see attached).

Discussion:

Research indicates that juror satisfaction is linked to how effectively juror time is managed. There are many things that jury clerks and managers can do to increase juror participation. For example, in the pre-trial phase, courts should determine the minimally sufficient number of jurors needed to accommodate trial activity. Courts should adjust the number of jurors summoned and assigned to panels based upon this information.

Courts should coordinate jury management with judicial calendar management. The term of service should be as short as possible. Recorded messages and other telephone call-in systems should be used to manage jurors. Pre-trial settlement conferences should be used. Juror waiting areas should be equipped to foster an environment conducive to private work, as well as provide appropriate reading material and other entertainment and diversion opportunities. At all times, the court should keep jurors informed of the progress in the disposition of the docket or calendar.

At the trial phase, trial judges should set and enforce time limits, within constitutional parameters, for trial. Judges should develop appropriate guidelines for severance of multiple claims or counts to reduce juror overload or confusion. Jury trial time should be maximized and trial interruptions should be minimized. Final jury instructions should be ready by the close of evidence.

Attachment

Proposed Rule of Judicial Administration

Rule 2.190 Juror Time Management

- (a) **Optimum Use.** The court should employ the services of prospective jurors so as to achieve optimum use with a minimum of inconvenience to jurors.
- (b) **Minimum Number.** The court should determine the minimally sufficient number of jurors needed to accommodate trial activity. This information and appropriate management techniques should be used to adjust both the number of individuals summoned for jury duty and the number assigned to jury panels, consistent with any administrative orders issued by the Chief Justice.
- (c) **Courtroom Assignment.** The court should ensure that each prospective juror who has reported to the courthouse is assigned a courtroom for voir dire before any prospective juror is assigned a second time.
- (d) **Calendar Coordination.** The court should coordinate jury management and calendar management to make effective use of jurors.

Americans With Disabilities Act (ADA)

39

The jury service recommendations of the Southeast Florida Center on Aging and the Supreme Court Commission on Fairness regarding policy and programmatic changes relating to elder citizens and citizens with disabilities should be adopted by the Supreme Court (see Attachment for recommendations).

Discussion:

[Discussion text taken from excerpts of the executive summary of the full report entitled *Jury Service Accessibility For Older Persons And Persons With Disabilities In Florida*, a collaborative project by the Southeast Florida Center on Aging of Florida International University and the Supreme Court Commission on Fairness, June 4, 1999.]

The right to trial by a jury of one's peers is a primary and unique characteristic of the American judicial system. Jury service is a privilege and responsibility of citizenship. Older citizens and citizens with disabilities should be able, along with other citizens, to exercise this fundamental right and responsibility.

Title II of the Americans With Disabilities Act of 1990 (ADA) prohibits state and local governmental entities from discriminating against individuals on the basis of disability. Title II covers state court programs and services, including jury service. It requires courts to provide access to jury service by making reasonable changes in policies, practices, and procedures; ensuring effective communication; and removing architectural barriers in courthouse facilities.

According to legal experts, barriers still exist in many states which prevent older citizens and citizens with disabilities from participating fully in jury service. For example, courtrooms may be unable to accommodate jurors who use wheelchairs, walkers, or other physical aids so that they, like other citizens, can take part in the democratic process of jury service.

Florida is the fourth largest state in the nation, with more than 14 million residents currently, and more than 18 million projected by 2010. The state presently has the largest proportion of older adults in the United States. More than 18% (approximately 2.7 million) of Florida's population is 65 and older and this population is expected to increase by one-third in the next 15 years.

Age increases the possibility that one may have a disability. In fact, older adults (age 65 and over) comprise a disproportionate number of persons with disabilities. Of the 2.7 million older adults in Florida, more than 415,062 are disabled with a mobility limitation (inability to go outside the home alone) or self-care limitation (inability to take of personal needs).

However, older adults comprise only a portion of persons with disabilities. In Florida, more than 872,787 adults between the ages of 16 to 64 also have a disability (work disability, mobility limitation, or self-care limitation). Given that the state's overall adult population is expected to increase over the next 15 years, it is expected that the adult disabled population will increase, as well.

ADA Attachment

1. It is recommended that the statutory affidavit forms for jury service be available at locations that older persons and persons with disabilities frequently visit. This includes post offices, libraries, banks, pharmacies, senior citizen centers and the like.
2. It is recommended that all requests for excusal that relate to illness or disability be referred for decision to the appropriate judge, who should confer with the court's ADA coordinator.
3. It is recommended that all judicial officers, clerks of court, and court staff undergo comprehensive training on the legal requirements of the ADA, as well as other court-related needs of elders and persons with disabilities.
4. It is recommended that the courts ensure that if telephones are available to potential empaneled jurors for private calls, accessible telecommunications equipment is equally available.
5. It is recommended that the courts ensure that all jury rooms, courtrooms, and jury deliberation rooms are equipped with assistive-listening devices.
6. It is recommended that the courts make real-time transcription services available whenever they are required by jurors who are deaf or hard of hearing.
7. It is recommended that the courts make restrooms easily accessible to all potential and empaneled jurors at every setting in which these individuals are found (i.e., jury assembly rooms, courtrooms, and jury deliberation rooms).
8. It is recommended that the courts make all doors (entrance and internal) sufficiently easy to open by persons using mobility devices or persons whose mobility or physical leverage is impaired.
9. It is recommended that jury boxes and jury deliberation rooms be accessible to individuals with disabilities, including persons who use mobility devices such as wheel chairs and scooters.
10. It is recommended that Florida courts provide facility maps on both wall directories and brochures.
11. It is recommended that jury managers, clerks, or ADA coordinators maintain records on the number and type of juror requests for ADA accommodations as well as dispositions of those requests.

12. It is recommended that jury managers, clerks, or other appropriate court staff maintain complete and accurate records on the number and type of requests for excusal and exemption from jury duty which are based on age or disability.
13. It is recommended that jury summons forms request detailed information on requests for excusals, along with the prospective juror's current phone number so that the prospective juror can be reached easily for further clarification, if needed.
14. It is recommended that the Florida State Courts System:
 - (a) closely monitor progress of the courts in reaching full accessibility statewide, utilizing clear goals and objectives and fixed time lines for compliance;
 - (b) launch a thorough and on-going effort to inform elders and persons with disabilities of that accessibility; and
 - (c) establish a mechanism for systematically monitoring the effectiveness of this educational effort.

Place Cards and/or Seating Charts

40

Place cards and seating charts are a valuable aid to jurors in cases with multiple parties, attorneys, or witnesses, at only a nominal cost to the parties or the court. However, their use should remain within the discretion of the trial court judge and should not be used in criminal cases in which the identity of the defendant is at issue.

Discussion:

Place cards or seating charts help jurors identify and distinguish the various individuals appearing in a courtroom. Before trial, counsel provides the court with the names of all participating parties, witnesses, and attorneys. Court staff prepare the name tags or place cards. A seating chart may be placed in the jurors' notebooks to aid them as the trial progresses. As noted in the recommendation, this technique should not be used for criminal trials in which the identification of the defendant is a disputed issue.

Post-Verdict Discussions

41

Judges should advise jurors of their rights regarding post-verdict discussions at the conclusion of a trial. This issue should become institutionalized through the judicial educational component of both the New Judges College and the Advanced College for Judicial Education. Experienced trial judges, acting as instructors at these respective colleges, can provide valuable insight and information to fellow judges regarding post-verdict discussions.

Discussion:

Post-verdict discussions by jurors with the media and attorneys have become commonplace in recent years. This is especially so in high-profile cases. However, not all jurors feel comfortable discussing the deliberative process. As a result, many judges provide post-verdict instructions/information to jurors advising them of their rights and obligations prior to their dismissal. Judges inform jurors that they are no longer prohibited from discussing the case with outside parties, but that they retain the right *not* to discuss the case with anyone if they so choose. Judges may also put restraints on attorneys or parties prohibiting them from contacting jurors. The court may also advise jurors that it is available to protect them from post-trial harassment if necessary.

Informal Communications Between the Judge and Jury

42

While it is permissible for judges to meet with jurors after a verdict is reached, the decision to do so should be left up to the discretion of the judge.

Discussion:

Judges who take the time to meet with jurors after a verdict has been declared achieve several goals. First, they demonstrate the court's sensitivity to the jurors' time and concerns. Second, they provide an opportunity for jurors to express any concerns they might have regarding the law or its application. Third, it allows judges to clarify what jurors' post-verdict rights and obligations might be. Finally, judges have the opportunity to get feedback from jurors as to their general impression as to how the jury system in their jurisdiction is being administered.

If a judge chooses to meet informally with jurors after a verdict, the judge must be aware of Canon 3 B (10), Code of Judicial Conduct, which, while allowing the judge to express appreciation to jurors for their service to the judicial system and the community, specifically prohibits a judge from commending or criticizing jurors for their verdict.

Post-Verdict Interviews By Attorneys and Researchers

43

While there is possible value in permitting attorneys and researchers to interview jurors in a post-verdict setting, the decision to permit such contact and determine the scope thereof should remain within the discretion of individual trial judges, who shall have the exclusive authority to authorize such meetings. The civil and criminal rules of procedure and standard juror instructions should be clarified and made uniform in relation to this issue. Nothing in this recommendation shall be interpreted to interfere with the right of jurors to be left alone.

Discussion:

Permitting or encouraging jurors to be interviewed by attorneys or researchers undoubtedly can be beneficial. This process provides attorneys with an opportunity to improve their advocacy skills with constructive feedback about their trial techniques. Researchers who study juror behavior can also gain valuable insight into the juror decision-making process.

Jurisdictions throughout the United States are split on this issue, some permit it with restrictions while others do not permit it under any circumstance. A number of issues are also raised by this process, such as where these interviews should take place and who should be present, whether the court should supervise the interviews, whether there should be any parameters to the interviews, what topic(s) may be covered, and how removed in time from the verdict the interviews should be. Most agree that the interviews should be conducted by someone who is neutral, yet knowledgeable, about both sides of the issue. In addition, jurors should also be informed of their rights, including the right *not* to participate.

Therefore, the Committee recommends that the Florida Supreme Court's Civil and Criminal Standard Jury Instructions Committees make clear the exact responsibilities of the judge, jurors, parties, and attorneys in relation to post-verdict interviews.

Juror Pay

44

Juror per diem rates should be reviewed every five years by the Legislature and any increase should be tied to the rate of inflation as identified by the Consumer Price Index or some comparable index. The attached table provides the projected amount for jury duty based on a three percent inflation rate for the next 12 years, beginning in year 2000.

Discussion:

The issue of juror pay is a sensitive one to many jurors. Many jurors believe that the pay they receive for jury duty is not commensurate with the inconvenience and sacrifice of jury service. A countervailing view, shared by many in the Legislature, is that jury service is a civic duty requiring some sacrifice. Moreover, to diminish the hardship on jurors, the Legislature amended section 40.24, Florida Statutes, in 1993 to reduce the term of service from one week to one day or the completion of one trial. Since most trials in Florida last one day or less, most citizens only serve for one day maximum each year. Moreover, the Legislature has also provided a hardship provision whereby jurors can be reimbursed \$15 per day if unemployed. All jurors are paid \$30 for the fourth day of service to the completion of the trial.

Jury Innovations Committee

Consumer Price Index

Rate of Inflation*

Juror Per Diem Projections 2000-2012

1993 Base Year	\$15.00 Per Day	\$30.00 Per Day
2000	\$17.77	\$35.54
2001	\$18.30	\$36.60
2002	\$18.85	\$37.70
2003	\$19.42	\$38.84
2004	\$20.00	\$40.00
2005	\$20.60	\$41.20
2006	\$21.22	\$42.44
2007	\$21.85	\$43.70
2008	\$22.51	\$45.02
2009	\$23.19	\$46.38
2010	\$23.88	\$47.76
2011	\$24.59	\$49.18
2012	\$25.34	\$50.68

* Assumes a 3% a year increase in the rate of inflation after 2000.

Note: 1993 was the year legislation was adopted providing for \$15 and \$30 per diem payments for jurors.

Employer Ordinance/Law

45

There should *not* be a statewide law requiring employers to pay their employees while serving on jury duty. However, an employer notification letter (signed by a judicial officer) should be made available upon request for any jurors to submit to their employers as proof of jury service (see attached Employer Notification Form). The Florida Legislature has already provided sufficient employment protection for jurors in section 40.271, Florida Statutes.

Discussion:

While it is unfortunate that some citizens who are summoned and appear for jury duty experience an economic penalty for performing a civic duty, the Committee believes it is neither wise policy nor feasible to mandate that employers pay their employees while on jury duty. Florida has made a serious commitment to its citizens to minimize inconvenience by reducing the term of service to one day or the completion of one trial. Most trials in Florida last three days or less. Unfortunately, some citizens who serve as jurors lose income as a result of their service.

While some abuses can occur, the Committee does believe that such jurors are presently sufficiently protected by section 40.271, Florida Statutes, which prohibits employers from dismissing employees because of jury service. This section also allows threats of dismissal from employment to be deemed contempt of court and authorizes a civil action by a dismissed employee. The Committee believes that this provision presents an equitable balance between the employment rights of a juror and the rights of employers to conduct their business without governmental interference.

Employer Notification Form

[Suggested Format]

Dear Employer:

This letter is to notify you that [Juror Name] [“ is currently serving/” has served /” is scheduled to serve] on jury duty in _____ County. Florida’s term of jury service is one day or through the completion of one trial. Most trials in Florida last three days or less. While we are sure that you share the belief that jury service is indispensable to and an essential ingredient of our judicial system, we feel obligated to inform you of certain provisions in Florida law which may relate to your employee’s juror service.

Section 40.271, Florida Statutes, provides that “no person summoned to serve on any grand or petit jury in this state, or accepted to serve on any grand or petit jury in this state, shall be dismissed from employment for any cause because of the nature or length of service upon such jury.” Section 40.271 further states that “threats of dismissal from employment for any cause, by an employer or his or her agent to any person summoned for jury service in this state, because of the nature or length of service upon such jury may be deemed a contempt of the court from which the summons issued.” Finally, section 40.271 authorizes a civil action to be brought by any individual who has been dismissed for any violation of this section, entitling such person to collect not only compensatory damages, but, in addition thereto, punitive damages and reasonable attorney fees.

We thank you in advance for your cooperation in this regard. Any questions regarding the summons or service on an employee should be directed to the jury manager for _____ County at (—) —.-----.

Sincerely,

Presiding or Jury Judge

Private Remuneration for Jury Duty

46

Private remuneration for jury duty should occur infrequently, if at all. However, if it occurs, it is recommended that all parties contribute an equal share of the remuneration provided, to ensure the integrity of the judicial system and to avoid any appearance of impropriety.

Discussion:

The Committee acknowledges that there is some sacrifice associated with jury service, especially in lengthy, complicated, civil or criminal trials that may involve several parties. Although rare, payment by parties to jurors under such circumstances has occurred in Florida. However, as a matter of public policy, the Committee believes that judges should carefully weigh the pros and cons of private remuneration before agreeing to permit it. As a safeguard, a decision to permit private remuneration should only occur at the conclusion of the trial, thereby avoiding any potential bias.

Juror Stress/Debriefing Sessions

47

The use of debriefing sessions to alleviate juror stress should be left to the discretion of the judge. At present, there is no need to codify or institutionalize the process.

Discussion:

The Committee concedes that there may be trials in which the evidence is especially gruesome, the case receives a great deal of media attention, or the trial is exceptionally lengthy (especially if sequestration is ordered), thereby producing juror stress. However, the Committee does not believe such cases can either be accurately predicted in advance or even identified when they occur in a sufficiently precise manner to warrant promulgation of a rule authorizing or requiring the use of such sessions.

In addition, the Committee recognizes the difficulty of administering group psychological sessions, with possibly unwilling participants of various social and psychological backgrounds. The Committee believes that such sessions presently may be provided by order of the trial court in particular cases.

Juror Privacy

48

Protecting a juror’s privacy must be balanced against the rights of plaintiffs and defendants to a fair trial. Rule 2.051, Florida Rules of Judicial Administration, which balances the public’s right to know with countervailing interests, implicitly allows public access to juror questionnaire information. Notwithstanding, the Supreme Court should adopt the American Bar Association (ABA) Standard for Juror Privacy as amended by the Committee. (See attached).

In addition, judges should use individualized voir dire, either at the bench or in chambers, whenever any sensitive issue, such as past criminal history, is raised. While the use of such voir dire might be time consuming, a juror’s privacy interest is of sufficient weight to justify the use of additional time. If legislation is necessary, it should be pursued.

Discussion:

The protection of a juror’s privacy is a constant balancing act for most courts. In Florida, courts must balance juror privacy rights with the public access rights of defendants, plaintiffs, the media, and others. At present, juror questionnaire information is available for review unless the court decides otherwise or selects an anonymous jury. The availability of sensitive juror information (primarily obtained through either juror questionnaires or voir dire) can create considerable anxiety for many jurors. Frequently, jurors complain to jury managers that this information should not be made public. Fear of reprisal from defendants or invasion of their privacy by the media are two primary reasons cited by jurors to keep this information private.

American Bar Association

Standard 20: Jury Privacy

- (a) JUROR QUESTIONNAIRES SHOULD DIFFERENTIATE BETWEEN INFORMATION COLLECTED FOR THE PURPOSE OF JUROR QUALIFICATION, JURY ADMINISTRATION, AND VOIR DIRE AND PROVIDE A MEANS FOR JURORS TO RESPOND PRIVATELY TO SENSITIVE QUESTIONS.
- (b) THE METHOD OF CONDUCTING VOIR DIRE SHOULD BE THAT BEST SUITED TO PROTECT THE PRIVACY OF POTENTIAL JURORS GIVEN THE NATURE OF INFORMATION SOUGHT AND THE RIGHTS INVOLVED.
- (c) AFTER JURY SELECTION IS COMPLETE, THE COURT SHOULD MAKE INACCESSIBLE TO THE PUBLIC, THE PARTIES, AND THEIR ATTORNEYS ANY INFORMATION COLLECTED IN CONNECTION WITH, OR REVEALED DURING VOIR DIRE ABOUT INDIVIDUALS CALLED FOR JURY DUTY BUT NOT SELECTED FOR THE JURY. **EMPLOYMENT AND HOME TELEPHONE NUMBERS, ADDRESSES, DISABILITY INFORMATION, AND SOCIAL SECURITY NUMBERS SHALL NOT BE RELEASED TO ANYONE WITHOUT AN ORDER FROM THE COURT.** RECORD RETENTION REQUIREMENTS SHOULD SPECIFY HOW THIS INFORMATION WILL BE MADE INACCESSIBLE. INFORMATION RETAINED FOR SWORN JURORS SHOULD ONLY BE THAT REQUIRED FOR REVIEW OF THE CASE ON APPEAL, AND SHOULD BE MADE INACCESSIBLE WHEN THE APPEAL IS COMPLETE OR THE OPPORTUNITY FOR APPEAL HAS PASSED.
- (d) BEFORE DISMISSING JURORS FROM JURY DUTY, THE COURT SHOULD INFORM JURORS OF THEIR RIGHTS TO DISCUSS OR TO REFRAIN FROM DISCUSSING THE CASE.
- (e) JURORS SHOULD HAVE THE CONTINUING PROTECTION OF THE COURT IN THE EVENT THAT INDIVIDUALS PERSIST IN QUESTIONING JURORS, OVER THEIR OBJECTION, ABOUT THEIR JURY SERVICE.

Note: Bold text added by the Jury Innovations Committee.

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Jury Service Exit Questionnaire

Final Results (N=1,320)

The Jury Innovations Committee conducted a Jury Service Exit Questionnaire to gain knowledge on juror experiences. The questionnaire was administered by court administration and Clerks of Court during the summer of 2000. The following are final results of data collected.

1. Did you serve on a civil or criminal jury?

Civil	9.2%	Reported/Did Not Serve	36.3%
Criminal	22.9%	No Response	31.7%

2. How would you rate the following factors? (for your last term of service)

	<u>Good</u>	<u>Adequate</u>	<u>Poor</u>	<u>N/A</u>	<u>No Response</u>
A. Clarity of juror summons	66.6%	11.1%	1.0%	1.2%	20.2%
B. Directions to the courthouse	63.9%	11.6%	2.7%	1.9%	19.9%
C. Juror tape recorded phone message	48.2%	12.1%	2.2%	16.1%	21.4%
D. Parking facilities	52.3%	17.7%	8.0%	2.0%	20.0%
E. Initial juror orientation	64.9%	12.7%	0.7%	1.1%	20.6%
F. Treatment by jury staff	71.5%	6.1%	1.2%	0.8%	20.4%
G. Snack bar facilities	35.1%	25.8%	9.8%	8.6%	20.8%
H. Comfort of the jury assembly room	42.8%	27.2%	8.6%	0.8%	20.6%
I. Efficient use of your time	26.9%	28.8%	20.9%	1.4%	22.0%
J. Orientation video and pamphlets	48.8%	19.0%	1.9%	8.9%	21.4%

3. Access Issues (for persons with disabilities)

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No Response</u>
A. Were you advised of accommodations that could be made for disabilities?	19.6%	6.5%	32.1%	41.7%
B. If yes, did you make use of any special accommodations?	2.7%	15.2%	36.5%	45.5%
C. Did you experience any problems in receiving an accommodation?	2.7%	11.1%	40.6%	45.5%
D. Could you hear and see the orientation and court proceedings adequately?	27.1%	1.9%	27.0%	44.0%
E. While serving, were you provided sufficient breaks?	25.5%	1.1%	29.2%	44.3%

4. Term of Service	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No Response</u>
A. Did you ask to be excused from or to reschedule your most recent jury service?	12.9%	62.2%	3.0%	21.9%
B. If yes, was your request granted?	9.8%	4.2%	45.1%	40.8%
C. If your request was denied, were the reasons adequately explained?	2.3%	3.1%	51.1%	43.5%
D. Do you think the Court (judge) was fair in denying or granting these requests?	13.0%	2.0%	43.8%	41.2%
E. Were you satisfied with your jury service?	45.9%	8.4%	13.6%	32.0%

5. Payment for Service:

A. Payment for service is:				
Good	5.0%	N/A	16.5%	
Adequate	18.0%	No Response	26.0%	
Poor	34.5%			

B. The daily payment rate should be:				
\$0	11.7%	\$30	12.8%	
\$15	6.1%	\$40+	32.7%	
\$25	11.7%	No Response	24.9%	

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No Response</u>
C. Do you feel payment is an important factor to serving?	33.9%	37.8%	4.0%	24.2%
D. Should all jurors be paid for service regardless of hardship?	53.3%	18.4%	3.3%	25.0%

6. Employment

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No Response</u>
A. Did your employer pay you while serving?	39.3%	21.5%	16.0%	23.2%
B. Did you have any problems with your employer regarding your service?	4.7%	53.9%	16.3%	25.2%
C. Are you self-employed?	9.5%	56.4%	9.5%	24.5%

7. The Judge...

	<u>Always</u>	<u>Frequently</u>	<u>Seldom</u>	<u>Never</u>	<u>No Response</u>
A. gave clear instructions/explanations of the juror's responsibilities	49.8%	8.6%	0.9%	0.8%	39.9%
B. told you what to expect	47.0%	10.1%	1.7%	0.6%	40.7%
C. kept you informed during the proceedings	41.7%	11.4%	1.6%	0.8%	44.5%
D. appeared to be in control of the court proceedings	49.1%	5.5%	1.0%	0.8%	43.7%

E.	was patient and courteous toward the jurors	51.2%	4.4%	0.5%	0.8%	43.1%
F.	was patient and courteous to the attorneys	45.0%	8.8%	0.7%	0.8%	44.8%
G.	was patient and courteous to the litigants and witnesses	43.8%	5.9%	0.3%	1.2%	48.8%
H.	was attentive	44.6%	7.6%	0.8%	1.0%	46.0%
I.	was fair and impartial (to both sides)	45.4%	5.1%	0.4%	1.2%	48.0%
J.	made sure there were no significant delays	37.1%	11.0%	2.6%	1.4%	48.0%
K.	explained the reasons for the delays	37.8%	8.0%	2.3%	2.5%	49.4%
L.	explained legal terms	39.8%	8.1%	2.3%	1.6%	48.3%

	<u>Yes</u>	<u>No</u>	<u>No Response</u>	
M.	permitted note-taking	17.0%	18.9%	64.1%
N.	allowed the jury to ask questions	21.0%	18.3%	60.8%
O.	gave me written jury instructions on the law	16.4%	21.2%	62.4%

2. Courtroom Staff

Was the court’s staff and other personnel courteous and pleasant?

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>No Response</u>	
A.	Court Clerk	61.3%	0.7%	7.5%	30.5%
B.	Court Reporter	52.2%	1.1%	13.3%	33.4%
C.	Bailiff	57.9%	1.1%	8.0%	33.0%

9. Jury System Improvements

	<u>Strongly Agree</u>	<u>Agree</u>	<u>Neutral</u>	<u>Disagree</u>	<u>Strongly Disagree</u>	<u>No Response</u>
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A.	Jurors should be allowed to take notes.	29.2%	28.6%	9.5%	2.1%	0.5%	30.2%
B.	Jurors should be allowed to ask questions of witnesses during the trial.	8.0%	14.7%	13.4%	24.8%	8.3%	30.8%
C.	Jurors should be allowed to discuss the case before the end of the trial.	7.5%	13.2%	14.4%	24.5%	9.1%	31.3%
D.	Jury instructions should be clear and in plain English.	40.3%	25.7%	2.7%	0.5%	0.3%	30.5%
E.	Written jury instructions should be provided to jurors.	26.2%	26.7%	11.4%	3.6%	0.2%	31.8%
F.	Attorneys should be able to remove jurors from serving without giving a reason.	10.5%	16.4%	13.9%	22.5%	6.7%	30.0%

G. All exemptions from jury service should be eliminated. 2.8% 9.2% 12.0% 29.8% 15.2% 31.0%

I. From which source list(s) should potential jurors be selected? (check all that apply)

Driver's Licenses	59.2%	Registered Voters	44.3%
Property Tax Records	14.2%	Library Card Holders	25.4%
Public Assistance Rolls	11.7%	Other	6.1%

J. What penalty should the court impose against those who fail to respond to their jury summons?

Fine	47.9%	Jail and Fine	9.1%	No Response	31.3%
Jail	1.3%	No sanction	10.5%		

Responses to Fine Amounts (n=559)

Range	\$0.00 to \$50,000
Median	\$100.00
Mean	\$352.20

\$0.00 - \$25.00	9.3%	\$100.01 - \$500.00	29.3%
\$25.01 - \$50.00	19.0%	\$500.01 - \$50,000	7.2%
\$50.01 - \$100.00	35.2%		

(10) Attitudinal Questions	Strongly		Neutral	Strongly		No Response
	<u>Agree</u>	<u>Agree</u>		<u>Disagree</u>	<u>Disagree</u>	
A. The Florida jury system works well.	11.4%	38.8%	16.8%	3.6%	0.8%	28.6%
B. The average juror understands jury procedures.	7.6%	40.1%	13.3%	9.0%	0.9%	29.1%
C. Jury duty is an important opportunity to participate in the democratic process.	34.8%	29.3%	6.3%	1.5%	0.4%	27.7%
D. Procedures for jury selection are applied impartially.	15.2%	33.3%	15.7%	5.0%	0.9%	29.9%
E. The plaintiff was treated fairly.	12.8%	26.0%	12.3%	0.5%	0.5%	48.0%
F. The defendant was treated fairly.	13.1%	26.7%	11.7%	0.4%	0.5%	47.5%
G. Florida courts administer justice so that we can live in a civil manner.	23.3%	33.9%	8.5%	1.2%	0.9%	32.1%
H. Florida courts help us live as a free and orderly community.	23.3%	34.8%	8.9%	1.2%	0.7%	31.2%

I. Florida courts ensure that we continue as a democracy.	23.8%	34.5%	8.2%	1.2%	0.9%	31.4%
J. Florida courts are strongly committed to ensuring fairness to all people in a timely and responsive manner.	18.7%	32.9%	12.1%	3.7%	1.7%	30.9%

11. Approximately how long did you serve on the jury?

1 day or less	43.3%	4 or more days	4.4%
2-3 days	13.1%	No Response	39.2%

12. What is your most recent date of service?

Through December, 1999	0.2%	October, 2000	9.5%
January, 2000 - June, 2000	0.1%	November, 2000	3.3%
July, 2000	7.8%	December, 2000	0.7%
August, 2000	20.1%	No Response	55.8%
September, 2000	2.6%		

Statistical Information

13. Age

Less than 21	1.5%	41 - 50	20.3%	No Response	28.3%
21 - 30	6.9%	51 - 60	18.1%		
31 - 40	13.1%	Over 60	11.7%		

14. Sex

Male	39.8%	No Response	26.1%
Female	34.2%		

15. Education Level

Primary and Secondary	14.9%	Masters Degree	6.9%
Some College or Vocational Training	23.7%	Doctorate or Law Degree	1.9%
Associate Arts (AA) or Vocational Training	8.9%	Post-Doctorate Degree	0.4%
Bachelor of Arts or Sciences (BA/B.S.)	16.9%	No Response	26.4%

16. Income Level

Less than \$5,000	2.4%	\$25,000-\$29,999	7.9%	\$75,000-\$100,000	3.8%
\$5,000-\$9,999	2.2%	\$30,000-\$34,999	6.3%	Over \$100,000	4.5%
\$10,000-\$14,999	3.7%	\$35,000-\$39,999	7.5%	No Response	33.5%
\$15,000-\$19,999	4.3%	\$40,000-\$49,999	8.5%		
\$20,000-\$24,999	6.1%	\$50,000-\$74,999	9.3%		

17. Race

Asian	1.0%	White Hispanic	10.8%
Black Hispanic	1.0%	White Non-Hispanic	49.2%
Black Non-Hispanic	4.1%	Other	2.4%
Native American	3.3%	No Response	28.3%